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**Managing Our Water Resources - An Assessment of the
Existing Management and Financial Program for Water
Quality Management in North Central Texas for
Consistency with Section 208(c)(2) of P.L. 92-500**

North Central Texas Council of Governments, Arlington

Prepared for

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Review Draft



A Working Paper under the Areawide
Water Quality Management Planning Process

Prepared for the North Central Texas Council of Governments by Barnes and Co.

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EXECUTIVE SUMMARY

SCOPE OF REPORT

This working paper focuses on the requirement contained in section 208(c)(2) of Public Law 92-500 that the management agency (or agencies) designated by the Governor to implement each areawide plan must possess certain types of water quality management authority, and on the implications of that requirement for the North Central Texas planning area (Figure 1). More specifically, Chapter I of the report discusses in detail the nature and extent of water quality management authority that section 208(c)(2) requires. Chapter II compares Texas law governing water quality management activities to the provisions of section 208(c)(2). Chapter III looks at state policies concerning the designation of management agencies. Chapter IV examines the North Central Texas water quality management program, including an analysis of the 14 operators of major publicly owned waste treatment plants, an inventory of all governmental entities having water quality related regulatory authority in the area, and a study of intergovernmental arrangements for water quality management. Finally, Chapter V presents the report's conclusions, concentrating on particular aspects in which the North Central Texas program can or cannot satisfy section 208(c)(2).

SUMMARY OF CHAPTER I

Section 208 requires the Governor to designate one or more agencies to carry out each areawide waste treatment management plan. The statutory language endorses the notion of a "management system"--a group of several agencies each of which has responsibility for implementing a specified

element of the overall plan. The management system, as a collective entity, must have adequate authority to fully carry out the areawide plan.

A designated management agency or agencies, individually or collectively, must have four types of water quality management authority:

- (1) waste treatment authority;
- (2) financial authority,
- (3) regulatory authority; and
- (4) general management authority.

The first category includes the authority to design, construct, operate and maintain waste treatment works; the authority to treat industrial wastes; and the authority to refuse to receive wastes from any municipality or subdivision of a municipality that fails to comply with any applicable provision of an areawide plan. The second category includes the authority to accept and utilize grant funds for waste treatment management purposes; the authority to raise revenues, including the assessment of waste treatment charges; the authority to incur short- and long-term debt; and the authority to assure that each community participating in the implementation of an areawide plan pays its proportionate share of treatment costs. The third category includes the authority to regulate point and nonpoint sources of pollution; the authority to regulate the location, modification, and construction of any facilities that may result in any pollutant discharge in the planning area; and the authority to regulate pretreatment of industrial wastes discharged into publicly owned treatment systems. The final category includes a general requirement that the designated agency or agencies have the capability to effectively manage treatment works and other pollution control programs in accordance with the areawide plan.

SUMMARY OF CHAPTER II

In Texas, cities, counties, and special districts created pursuant to the Conservation Amendment to the state constitution have authority to design, construct, operate, and maintain treatment works, including sanitary sewers and storm sewers, and to accept industrial wastes for treatment. Local governments that operate treatment systems possess authority under current law to deny new sewer service to municipalities and subdivisions that refuse to comply with applicable plan provisions and generally appear to have authority to terminate ongoing service for plan violations that relate to the treatment system. They may not have the power, however, to terminate service for plan violations not directly related to the treatment system, such as a failure to carry out necessary nonpoint source control programs.

Cities, counties and Conservation Amendment districts have all of the financial authority that section 208(c)(2) requires. Each type of local government may accept grant monies for waste treatment management purposes, raise revenues by assessing waste treatment charges, and incur both short- and long-term debt, although counties have limited ability to finance major facilities. In addition, Texas law governing interlocal contracting for waste treatment service and cooperative financing of treatment systems provides several methods for assuring that each participant in a joint treatment program pays its proportionate share of both capital costs and operation and maintenance costs.

State and local agencies in Texas have a broad range of regulatory authority upon which to build the regulatory program that section 208 requires. The Texas Water Quality Board has the power to establish water

quality standards and to issue discharge permits for both point and nonpoint sources of pollution. Cities have authority to establish municipal water pollution control programs that include nonpoint source abatement measures and to implement land use and development controls such as zoning, floodplain zoning, subdivision regulations, and building codes. Counties have authority to adopt floodplain zoning and limited subdivision regulations and in conjunction with the Texas Water Quality Board, to regulate private sewage facilities. Each local government that owns or operates a waste treatment system has the power to regulate industrial pretreatment. Other agencies and units of local government have authority to control soil erosion, solid waste disposal, pesticides and fertilizers, surface mining, wastes from oil and gas production, and dredging in navigable waters.

In the area of general water quality management authority, local governments have broad powers to contract among themselves for the performance of waste treatment and other governmental functions. In addition, the Texas Water Quality Board, river authorities, and regional councils of governments have authority to engage in water quality management planning.

SUMMARY OF CHAPTER III

The Texas Water Quality Board has not adopted any formal state guidelines concerning the designation of management agencies, but the agency's staff has issued a memorandum that discusses factors for consideration in the development of areawide water quality management systems. The memorandum suggests that the Board should have responsibility for the issuance and enforcement of point source discharge permits, stream monitoring and maintenance of water quality data, monitoring plan implementation, updating plans, establishing water quality standards, and setting priorities for

the award of federal construction grant funds. Local and regional agencies would have responsibility for constructing, financing, and operating waste treatment systems.

The memorandum's proposals generally conform to applicable federal and state law, although they raise a few questions of interpretation. Section 208 seems to anticipate that a regional agency selected to prepare the initial areawide plan will have responsibility for updating the plan absent a failure by the regional agency to fulfill its obligations. Furthermore, section 208 requires the designation of management agencies to carry out any regulatory programs included in the plan, whereas the memorandum states that nonpoint source management agencies will not be designated at the conclusion of the planning process. The memorandum does not discuss the regulation of facilities location or of industrial pretreatment.

SUMMARY OF CHAPTER IV

The waste treatment and financial components of the North Central Texas water quality management program are well established. Fourteen governmental entities have responsibility for financing, constructing, and operating major publicly owned waste treatment systems. Six of those entities (Dallas, Denton, Fort Worth, Garland, North Texas Municipal Water District, and Trinity River Authority) provide service to more than one jurisdiction. The remaining eight (Colony M.U.D. #1, Flower Mound M.U.D. #1, Grapevine, Lewisville, McKinney, Midlothian, Richardson, and Seagoville) operate plants serving a single jurisdiction.

Numerous governmental agencies possess water quality related regulatory authority in the North Central Texas planning area. The area includes all or part of eight counties, more than 125 cities, and a few special

districts that have regulatory powers. In addition, eight state agencies and three federal agencies engage in regulatory activities related to water quality management.

Intergovernmental arrangements for water quality management in the planning area include the Management and Finance Program of the 1970 Upper Trinity River Basin Comprehensive Sewerage Plan, the NCTCOG Water Quality Council, the 208 Areawide Planning Advisory Committee, and the Upper Trinity River Basin Water Quality Compact. Local governments in the area have also made extensive use of intergovernmental contracts for waste treatment purposes.

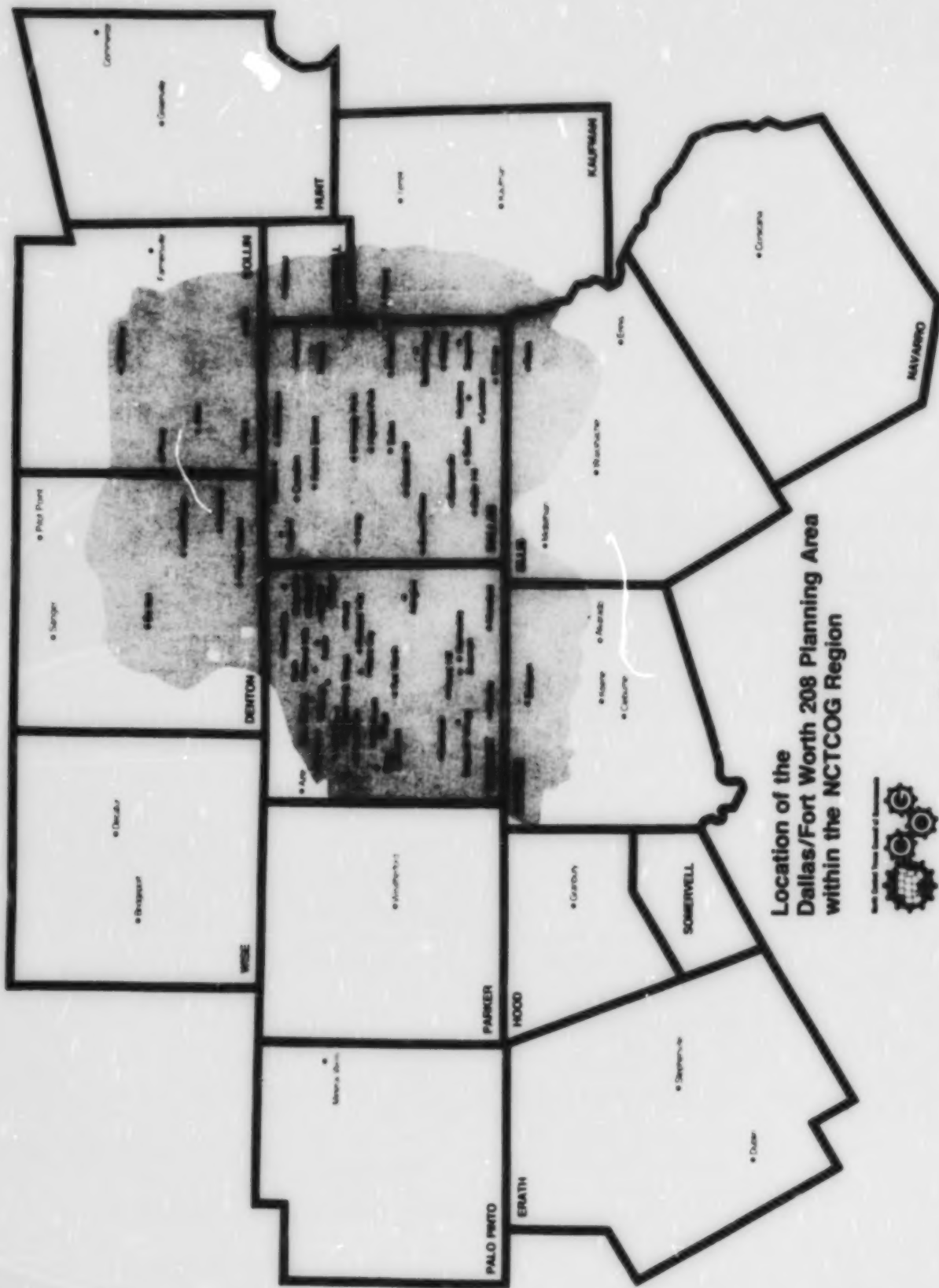
SUMMARY OF CHAPTER V

Conclusion One: The governmental entities that presently have responsibility for the operation of major publicly owned waste treatment works in North Central Texas have all of the waste treatment authority, with two possible exceptions, that section 208(c)(2) requires.

Conclusion Two: The governmental entities that presently have responsibility for financing major publicly owned waste treatment works in North Central Texas have all of the financial authority that section 208(c)(2) requires.

Conclusion Three: Texas law probably provides sufficient water quality related regulatory authority to fashion a program that will satisfy the provisions of section 208.

Conclusion Four: Texas law probably provides sufficient authority for cooperative water quality management activities to enable the development of an intergovernmental system that can effectively manage treatment works and other pollution control programs in accordance with the areawide plan.



I. AREAWIDE WATER QUALITY MANAGEMENT UNDER SECTION 208

OVERVIEW: THE CONCEPT OF AN AREAWIDE WATER QUALITY MANAGEMENT SYSTEM

The legislative history and the language of Federal Water Pollution Control Act Amendments of 1972 (the Act) evidence a strong congressional intent that states and local governments should not only develop, but also implement, areawide waste treatment management plans. The opening lines of the Act declare:

[I]t is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State.¹

Each plan must identify the agencies necessary to fully carry out the plan's pollution control programs,² and must also specify the financing and the period of time required for plan implementation.³ After the EPA has approved a 208 plan for an area and the Governor has designated implementing agencies having the requisite authority, the EPA may not make any grants for the construction of waste treatment works within the area except to a designated agency for works in conformity with the plan.⁴ Furthermore, neither the EPA nor any state may issue a permit under the NPDES system that conflicts with an approved 208 plan.⁵ Finally, the Act authorizes private citizens to bring suit against EPA to force compliance with the statutory language.⁶

Section 208 contains several novel features that pose problems for plan implementation. First, the statute mandates the examination of waste treatment needs from an areawide perspective, rather than from the point of view of a single jurisdiction.⁷ Second, it compels consideration of regional

land use and urban development patterns to the extent that those patterns affect water quality.⁸ Third, the law requires an effort to abate pollution from nonpoint sources, such as agricultural and urban stormwater runoff, through the application of regulatory and other control techniques.⁹ In most, if not all, metropolitan areas, authority for these activities--waste treatment, management of land use and development, and control of nonpoint sources--rests with numerous governmental entities.¹⁰ Thus the planning process must include an element that speaks to the proper institutional network for carrying out diverse water pollution control programs in a coherent manner.

Although the Act provides detailed instructions concerning plan implementation, it nevertheless allows a high degree of flexibility in the selection of intergovernmental arrangements for water quality management. Section 208(c)(1) requires the Governor, at the time he submits a plan to the EPA for approval, to designate "one or more waste treatment management agencies" to implement the plan.¹¹ Eligible agencies include any "existing or newly created local, regional, or State agency or political subdivision,"¹² as well as any interstate or federal agency.¹³ Section 208(c)(2)(A) provides that, to receive EPA approval, the designated management agency or agencies must have adequate authority "to carry out appropriate portions of an areawide waste treatment management plan developed under . . . this section."¹⁴ These provisions indicate that the statute does not require, although it would permit, the creation of a single, massive governmental entity with regional jurisdiction and broad powers. Rather, the language of section 208 clearly endorses the notion of a "management system"--a group of several agencies, each having responsibility for implementing a specified part of the plan. Under this approach, division of authority can follow both functional and geographic lines. For example, a few major operators could provide waste treatment services on a regional basis, while non-

operators retain responsibility for nonpoint source control. Devices such as intergovernmental contracts and agreements for the joint exercise of powers could play an important role in encouraging all agencies comprising the system to work toward a common objective. In some cases, a single entity-- such as the planning agency, the state, or a major treatment plant operator-- might have the responsibility of overseeing and coordinating plan implementation. The approach that any particular 208 area adopts will depend largely on the existing allocation of water quality management authority and the locally perceived need, if any, for alterations.

Section 208 and EPA regulations include several provisions designed to assure adequate plan implementation in areas that follow the management system approach. First, section 208(c)(2)(B) requires the management agency or agencies to have the authority "to manage effectively waste treatment works and related facilities" in accordance with the plan.¹⁵ Since the next line in the statute expressly refers to the power to operate and maintain treatment works,¹⁶ section 208(c)(2)(B) apparently speaks to organizational and financial capabilities rather than pure legal authority. The EPA's determination of "effectiveness" may turn on such factors as the dispersion of authority among agencies and the strength of coordinating mechanisms.¹⁷ Second, EPA regulations provide that the EPA may withdraw approval of a management agency designation in the event that the agency fails to implement its assigned portion of the areawide plan.¹⁸ Such an action would terminate the agency's eligibility for construction grant funds, since the law provides that, following plan approval, the EPA may make construction grants only to designated management agencies.¹⁹ Third, section 208(c)(2)(H) states that a management agency or agencies must have adequate authority to refuse to receive any wastes from any municipality or subdivision that fails to comply with any

plan requirements.²⁰ This provision appears to contemplate the imposition of sanctions against local governments and subdivisions that do not follow the areawide plan.²¹

SPECIFIC REQUIREMENTS FOR WATER QUALITY MANAGEMENT AUTHORITY

Section 208(c)(2) provides that, to receive EPA approval, a designated management agency or agencies, individually or in aggregate, must possess adequate authority:

- "(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;
- (B) to manage effectively waste treatment works and related facilities in conformance with any plan required by subsection (b) of this section;
- (C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;
- (D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;
- (E) to raise revenues, including the assessment of waste treatment charges;
- (F) to incur short- and long-term indebtedness;
- (G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;
- (H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and
- (I) to accept for treatment industrial wastes."²²

It bears repeating that the law does not demand that any single agency meet all of these criteria. It is sufficient that two or more agencies collectively satisfy the requirements for water quality management authority.

The remainder of this chapter discusses each of the preceding require-

ments and attempts to clarify and expand upon the statutory language. For ease of presentation, the report classifies the criteria into four groups: waste treatment authority, financial authority, regulatory authority, and general management authority.

WASTE TREATMENT AUTHORITY

Authority to Design, Construct, Operate, and Maintain Treatment Works.

Section 208(c)(2)(C) provides that a management agency or agencies must have the power, either directly or by contract, to design and construct new treatment works, and to operate and maintain new and existing works, as specified in the plan.²³ The Act defines "treatment works" in expansive terms:

. . . any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature . . . including intercepting sewers, outfall sewers, sewage collecting systems, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be any integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

In addition, . . . treatment works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste in combined storm water and sanitary sewer systems.²⁴

This definition makes it clear that the management system, as a collective entity, must have the authority to design, construct, operate, and maintain intercepting and collecting sewers as well as treatment plants. In a case in which one city contracts with another city for waste treatment services but retains control over its local sewage collection system, section 208(c)(2)(C) requires the designation of both cities as management agencies.

The customer city must be designated for the limited purpose of operating and maintaining its collection system, while the city providing treatment services must be designated for the purposes of operating and maintaining the treatment plant, intercepting sewers, and its own local collection system. Unless the customer city receives such a designation, it will not be eligible for EPA construction grant funds to expand or improve its sewer system.²⁵ The Act's definition of treatment works also makes it clear that the management system must have the authority to implement any unconventional control technique provided for in the plan, because the definition encompasses much more than conventional sewage collection and treatment systems.

Authority to Treat Industrial Waste. Section 208(c)(2)(I) states that a management agency or agencies must have the power to accept industrial wastes for treatment.²⁶ The Act does not directly define the term "industrial waste" but defines "industrial users" of public treatment works to mean:

. . . those industries listed in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D--Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.²⁷

The EPA has expanded this definition to include not only manufacturers, but also industries listed under Agriculture, Forestry, and Fishing; Mining; Transportation, Communications, Electric, Gas, and Sanitary Services; and Services.²⁸ The requirement for authority to treat industrial wastes does not by itself present any problems of interpretation. It does, however, bring into play the Act's complex provisions for industrial cost recovery and pretreatment of industrial waste, which this chapter discusses under the headings of financial authority and regulatory authority.²⁹

Authority to Refuse Wastes from Noncompliant Municipalities and

Subdivisions. Section 208(c)(2)(H) requires that a management agency or agencies have adequate authority to refuse to receive any wastes from any municipality or subdivision of a municipality that fails to comply with any applicable plan provision.³⁰ This requirement apparently contemplates utilizing the denial or termination of access to a regional treatment system as a means of compelling customers of the system to carry out an areawide plan. A literal application of section 208(c)(2)(H) could have very serious and potentially counterproductive consequences. The termination of an existing customer city's access to a regional treatment system would force the city either to shut down operations, causing severe hardship for individuals, businesses, and others, or to discharge untreated wastes directly into some body of water, making the city vulnerable to a state or EPA enforcement action for civil penalties or injunctive relief.³¹ To avoid the possibility of raw pollutant discharge and state or EPA intervention, a 208 management system should provide for less stringent and more workable plan enforcement procedures. The EPA has recognized this problem and has suggested that management agencies should refuse treatment service only "in extreme cases . . . if such measures as negotiations, fines, additional charges, moratoria, and court settlements have proven unsuccessful."³²

Congress' use of the term "subdivision" in section 208(c)(2)(H) provides needed flexibility but also raises additional problems. In this context, a housing development, an industrial or commercial user, or a residential user could constitute a "subdivision" or a municipality. If an identifiable individual user or group of users fails to comply with some requirement of an areawide plan, the management agency, after exhausting other methods of obtaining compliance, could selectively cut off treatment services. With respect to a noncompliant user located within the jurisdiction of the

management agency, this approach probably would enforce the plan and would not cause widespread disruption and inconvenience. If, however, the non-compliant user is located beyond the boundaries of the management agency and within the jurisdiction of a city that purchases treatment services from the management agency, this approach might encounter significant legal and political obstacles. To provide for such a contingency, the management system should establish a process for joint action by both the management agency and the customer city against a noncompliant user located within the boundaries of the customer city.

A management agency might also exercise the power required by section 208(c)(2)(H) by conditioning new sewer connections to cities and subdivisions in the development stage upon an agreement to conform to all plan provisions. If backed up by a refusal to issue a discharge permit for a package treatment plant and a prohibition against septic tanks in the area, the denial of new sewer connections will stall development indefinitely and will place strong pressure on the developing area to comply with the plan. A management agency, by including in the treatment service contract specifically enforceable provisions relating to plan compliance, can obtain the power to bring suit in court to enjoin any plan violations by the customer city or subdivision as a breach of contract.

FINANCIAL AUTHORITY

Authority to Accept and Utilize Grants. Section 208(c)(2)(D) requires the management agency or agencies to have authority to accept and utilize grant funds or funds from any other source for waste treatment management purposes.³³ With one exception, this provision needs no explanation. "Waste treatment management purposes" include not only the collection and treatment

of municipal and industrial wastes, but also regulatory and other non-structural methods of abating water pollution. EPA regulations expressly require the authority to accept grants for nonpoint source control purposes.³⁴

Authority to Raise Revenues, Including Waste Treatment Charges. Section 208(c)(2)(E) provides that the management agency or agencies must have adequate authority to raise revenues, including the assessment of waste treatment charges.³⁵ This provision parallels a requirement in section 204 that all recipients of federal construction grant assistance employ a system of user charges to assure that each user of publicly owned treatment works pays its proportionate share of the costs of operation and maintenance of the works.³⁶ Current EPA regulations specify five characteristics of an approvable local user charge system:

- (1) the system must distribute the costs of operation and maintenance of treatment works within the operator's service area among users in proportion to each user's (or each class of users) contribution to the total wastewater load, based on factors such as volume, strength, and delivery flow rate;
- (2) for the first year of operation, operators must base operation and maintenance costs on past experience for similar works or some other demonstrably rational method;
- (3) the operator must review the user charges on an annual basis and revise them periodically to reflect changes in operation and maintenance costs;
- (4) the system must generate enough revenue to offset all operation and maintenance costs incurred by the operator; and
- (5) the system must be incorporated in one or more municipal legislative enactments or other appropriate authority.³⁷

Section 204 also requires that all industrial users of public treatment systems pay not only their proportionate share of operation and maintenance costs, but also that portion of the federal share of construction costs that is allocable to industrial waste treatment.³⁸ EPA regulations state

that industrial users must make industrial cost recovery payments no less often than annually over a period of 30 years or the useful life of the treatment works, whichever is less.³⁹ Local governments may retain half of the funds generated through industrial cost recovery, but must return half to the U. S. Treasury.⁴⁰ Of the retained amount, local governments must utilize 80 percent for future plant expansion and construction, but have discretion over the use of the other 20 percent.⁴¹ In sum, a 208 management agency responsible for waste treatment must have the authority to establish a system of proportionate waste treatment charges and a system for industrial cost recovery.

Authority to Incur Debt. Section 208(c)(2)(F) states that a management agency or agencies must have the power to incur short- and long-term indebtedness.⁴² An entity that has authority to enter into contracts and to borrow money generally has the power to incur short-term debt. To incur long-term debt, an agency must be empowered to issue bonds secured by tax revenues or revenues from the operation of treatment works or other public utilities.

Authority to Assure that Each Participating Community Pays Its Proportionate Share of Treatment Costs. Section 208(c)(2)(G) requires a management agency or agencies to have adequate power to assure that each community participating in the implementation of an areawide plan pays its proportionate share of treatment costs.⁴³ This provision deals with the situation in which, pursuant to an areawide plan, two or more communities utilize a single waste treatment system, and aims at preventing the subsidization of one participant by another with respect to local capital costs. Section 204 and EPA regulations mandate that all cities participating in a regional treatment program adopt a user charge system;⁴⁴

this requirement assures that every jurisdiction pays a proportionate share of operation and maintenance costs, but has no impact on the allocation of local capital costs. Section 208(c)(2)(G) complements section 204's user charge provisions by requiring each participating community to contribute to the local share of the cost of constructing the treatment system, so that the regional plant operator does not bear the total burden. Each community's portion should relate directly to its contribution to the total wasteload.

EPA's regulations alter the statutory language by requiring the authority to assure, in implementation of an areawide plan, a proportionate sharing of "related costs" rather than "treatment costs."⁴⁵ This change may be intended to require that participating communities share all costs incurred in plan implementation, including the expenses of managing nonpoint source pollution. Nothing appears in any of the EPA's guidance materials that clarifies the meaning of "related costs."

REGULATORY AUTHORITY

Management agencies must possess, in addition to waste treatment and financial powers, authority to carry out certain regulatory activities. Although section 208(c)(2) does not expressly refer to regulatory powers, it does require adequate authority to carry out appropriate portions of the plan⁴⁶ and each plan must establish a regulatory program to:

"(i) implement the waste treatment management requirements of section 1281(c) of this title, [which provides that 'To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources']

(ii) regulate the location, modification, and construction of any facilities . . . which may result in any discharge in [the planning] area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in [the planning] area meet applicable pretreatment requirements."⁴⁷

The Governor must designate an agency or agencies to implement each element of the regulatory program⁴⁸ and each agency must have the authority to carry out its assigned responsibilities.⁴⁹ On the other hand, if the planning process demonstrates that one or more types of pollution sources do not exist in significant amounts within the planning area or that water quality goals do not require certain types of regulatory activities, the management system obviously does not need such regulatory authority. The statute requires only that the management system have adequate authority to carry out the regulatory programs established in the plan.

Several factors indicate that planning agencies should make every effort to design regulatory programs that rely on authority provided by existing statutes and ordinances. The EPA has directed planning agencies to take full advantage of existing legislative authority in devising regulatory systems and will require a description of any additional legislation needed for plan implementation.⁵⁰ Any statutory and regulatory measures required to implement the plan must be adopted by the date of the EPA's approval of the plan.⁵¹

Authority to Regulate Point and Nonpoint Source Pollution. The requirement that each areawide plan contain a program to assure control or treatment of all point and nonpoint sources of pollution subsumes several other provisions of section 208. Each plan must include:

- (1) an identification of all necessary urban storm water runoff systems;⁵²
- (2) processes to identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution (including runoff from manure disposal areas and from land

used for crop and livestock production), mine related sources of pollution (including surface and underground mine runoff), construction activity related sources of pollution, and salt water intrusion into fresh water; and methods and procedures (including land use requirements) to control such sources to the extent feasible;⁵³

- (3) a process to control the disposition of all residual waste generated in the planning area that could affect water quality;⁵⁴
- (4) a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality;⁵⁵ and
- (5) a process to control pollution related to hydrologic modifications.⁵⁶

This aspect of the regulatory program also overlaps section 402, which establishes a permit program for the control of all point source discharges.⁵⁷

The EPA has adopted a strategy that favors the development of "best management practices" for control of runoff related, erosion related, and other nonpoint sources of pollution. For each appropriate category of nonpoint source, the plan must identify "best management practices" that will result in the desired level of control.⁵⁸ A best management practice consists of one or more measures that the planning agency determines to be the most effective and practicable means of abating nonpoint source pollution to a level compatible with water quality goals, taking into account technological, economic, and institutional considerations.⁵⁹ Thus the application of these control measures may vary from area to area depending on the extent of water quality problems.⁶⁰ Once selected, best management practices must be incorporated into the regulatory program and assigned to one or more agencies for implementation.⁶¹

Section 402 established the National Pollutant Discharge Elimination System (NPDES),⁶² a permit program that will prescribe limitations on the quantity and quality of effluent that may discharge into navigable waters⁶³

from any point source. The Act defines "point source" as:

any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.⁶⁴

The Act does not make clear why it requires point source regulation in both section 208 and section 402, particularly in light of the provision that prohibits the issuance of any NPDES permits that conflict with an approved areawide plan.⁶⁵ Logic indicates that the NPDES program should serve as the mechanism for point source regulation under section 208 and that NPDES permits should incorporate any standards or requirements contained in approved areawide plans.

The EPA recently proposed a new "general" or "area" permit program for urban storm sewers and irrigation conveyances that will have significant implications for section 208 regulatory programs. Certain structures and activities, such as urban storm sewers, concentrated animal feeding operations and others, have characteristics of both point and nonpoint sources of pollution. These structures and activities technically fall within the Act's definition of point sources,⁶⁶ but present significant problems for control through the NPDES permit program because of their number, variety, and dispersion. The EPA initially excluded such sources from the permit program, but a federal court overruled the agency's action.⁶⁷ The EPA appealed the decision, but has issued interim regulations defining certain animal feedlots and silvicultural activities as point sources for purposes of permit issuance,⁶⁸ and proposing a new program for controlling pollution from separate storm sewers and conveyances carrying irrigation return flows.⁶⁹ Under the proposed program, the EPA or a state would issue a single permit for all storm sewers or irrigation conveyances within a specified area, the

boundaries of which should correspond with the boundaries of a 208 planning area whenever possible. First generation permits would authorize discharges at current levels, but would be revised to incorporate best management practices developed in the areawide planning process as areawide plans reach completion and approval. If the planning process in a particular area fails to identify best management practices, the EPA or the state could issue second generation permits imposing conventional effluent limitations or other restrictions. If the EPA adopts this program in final form, it will constitute a key element of the regulatory program required by section 208.

Authority to Regulate the Location of Facilities. The principal problem of interpretation involving the requirement for authority to regulate "the location, modification, and construction of any facilities . . . which may result in any discharge"⁷⁰ centers on the meaning of the phrase "facilities which may result in any discharge." The Act does not define "facilities" and uses the term in different contexts to mean different things.⁷¹ The reference to "any discharge" indicates that this provision speaks primarily to point rather than nonpoint source pollution; the statute defines "discharge" to include "a discharge of pollutants"⁷² and defines that phrase to mean "any addition of any pollutant to navigable waters from any point source."⁷³ Thus it is clear that "facilities" includes, at least, public and private installations that discharge directly into navigable waters.

The EPA appears to have adopted a more sweeping interpretation. EPA regulations state that each plan must include a program to control:

. . . the location, modification, and construction of any facilities, activities, or substantive changes in the use of the lands within the approved planning area, which might result in any new or deleterious discharge directly or indirectly into navigable waters.⁷⁴

The addition of the terms "activities" and "substantive changes in the use of the lands" probably does not significantly alter the statutory language because of the qualifying phrase relating to the discharge of pollutants. It is difficult to imagine an activity or a change in land use that could result in a point source discharge without the utilization of some type of physical facility. The insertion of the term "indirectly," however, could greatly broaden the scope of this requirement. The EPA has defined the term "indirect discharge" in another context to mean any introduction of pollutants from a source into publicly owned treatment works.⁷⁵ This definition suggests that the EPA may envision a program to prevent any overload of waste treatment works resulting from a rapid, unexpected accumulation of users by regulating the location, modification, and construction of all buildings, structures, and activities from which waste water is collected and transported for treatment. This interpretation finds some support in Congress' use of the language "facilities . . . which may result in any discharge"--that is, facilities that may contribute to treatment system overload--rather than the more straightforward "facilities which discharge." Congress may have meant to require a regulatory program that would ensure the effectiveness of expensive, new treatment plants and thereby protect the federal government's multi-billion dollar investment in those plants.

In light of this potentially far-reaching interpretation, it is important to note several important countervailing considerations. Although the legislative history contains some prominent references to the need for improved management of land use,⁷⁶ Congress has several times rejected national land use planning legislation⁷⁷ and did not adopt a general land

use planning scheme in section 208. The statute mandates consideration of land use and development patterns only as they impact the achievement of water quality goals and not for any other purpose. Unless the planning process identifies a problem that necessitates the application of land use controls--such as the threat of an overloaded treatment plant or a potential concentration of dischargers that would impair receiving water quality--the law provides no justification for imposing those controls. Furthermore, nothing in the statute favors placing limits on community growth. On the contrary, as the Senate Report stated:

Sufficient reserve capacity for municipal waste treatment plants is necessary to provide for . . . planned increases in load due to additional population, industrial growth, and other similar factors.⁷⁸

These considerations suggest that areawide plans should provide for waste treatment works with ample capacity for future growth but should also include a back-up land use management program to ensure the effectiveness of the treatment works if actual growth exceeds expectations and the planned treatment capacity proves temporarily inadequate.

Finally, and perhaps most importantly, the statute does not mandate the utilization of any particular type of land use regulation. In the context of water pollution control, land use management does not necessarily involve zoning, subdivision regulations, or other traditional forms of land use control. Local governments may elect to accomplish the goals of section 208 through the careful coordination of sewer connection permits, sewer use ordinances, waste treatment pricing mechanisms, utilities extension policies, discharge permit requirements, and similar measures. The law demands that the planning process examine the impact of land uses on water quality but leaves the selection of any needed control techniques to the discretion of

state and local decision makers.

Authority to Regulate Pretreatment of Industrial Wastes. Each area-wide plan must include a program to assure that industrial and commercial wastes discharged into publicly owned treatment systems meet "applicable pretreatment requirements."⁷⁹ Thus management agencies must have the authority to enforce pretreatment standards designed to avoid the introduction into public treatment systems of pollutants that will interfere with the operation of those systems or that will pass through unaffected by the treatment process. "Applicable pretreatment requirements" include national pretreatment standards promulgated by the EPA under section 307(b) of the Act⁸⁰ and any state and local standards that do not conflict with the national requirements.⁸¹

Pursuant to a settlement agreement with the Natural Resources Defense Council, the EPA recently proposed a comprehensive new scheme for regulating pretreatment that ultimately will replace the original standards adopted in 1973.⁸² The proposal includes four alternative approaches, ranging from direct federal/state enforcement of uniform national standards to local enforcement of local standards.⁸³ Under the latter option, the proposed rules would require federal/state enforcement through the NPDES permits in the absence of a qualifying local program⁸⁴ and would allow a local government to apply for EPA approval of its pretreatment program only if the Governor has designated the local government as a 208 management agency responsible for pretreatment regulation.⁸⁵ The elements of an approvable municipal pretreatment effort would include:

- (1) a statute, ordinance, contract, or other authority, enforceable in court, that enables the municipality to apply and enforce pretreatment standards and to deny or condition new or increased discharges to the public treatment system;

- (2) procedures for receipt, evaluation, and investigation of all notices and reports required of industrial users;
- (3) authority for inspections, monitoring, entry, and public access to information at least as extensive as that provided to the EPA by section 308 of the Act;
- (4) funding, personnel, and other resources necessary to carry out a program to monitor and inspect industrial users; and
- (5) recourse to civil, criminal, and civil injunctive remedies necessary to ensure compliance with pretreatment standards.⁸⁶

The exact nature of pretreatment regulatory authority necessary under section 208 will depend to a large degree on which of the four alternative approaches, if any, the EPA ultimately adopts.

GENERAL MANAGEMENT AUTHORITY

Authority to Effectively Manage Treatment Works and Related Facilities.

Section 208(c)(2)(B) requires a management agency or agencies to have adequate authority to "manage waste treatment works and related facilities serving [the planning] area in conformance with [the] plan."⁸⁷ Several terms in this provision present problems of interpretation, such as the phrase "treatment works and related facilities." As noted previously in this chapter, the Act defines "treatment works" in very broad language.⁸⁸ EPA regulations replace the term "related facilities" with "related point and nonpoint source facilities and practices."⁸⁹ Thus the management agency or agencies must have the authority to manage all pollution control programs called for by the areawide plan, including regulatory as well as waste treatment efforts.

Another question involves the meaning of the word "manage" in this context. Since section 208(c)(2)(C) expressly requires the power to operate

and maintain treatment works,⁹⁰ the requirement for authority to "manage" treatment works in conformance with the plan must demand more than pure legal authority. EPA guidance materials suggest that section 208(c)(2)(B) refers to institutional, organizational, and operational capabilities:

Institutional arrangements must assure that the overall program of waste treatment and regulation of pollution sources is coordinated, the plan implemented, and its performance assessed. It is essential that overall supervision of the program and accountability for its operation be achieved through the designation of an agency to possess the authority and resources for program oversight.⁹¹

If this view proves correct, then the EPA's determination of "effectiveness" may turn on an analysis of such factors as the dispersion of authority among agencies, the strength of coordinating mechanisms, and procedures for plan enforcement. The EPA could disapprove a proposed management system that possesses the requisite legal authority but does not appear to have the institutional and organizational capacity to fully implement the areawide plan and achieve the area's water quality goals.

FOOTNOTES - CHAPTER I

1. 33 U.S.C. § 1251(a)(5) (Supp. IV, 1974) (emphasis added).
2. Id. § 1288(b)(2)(D).
3. Id. § 1288(b)(2)(A), (E).
4. Id. § 1288(d).
5. Id. § 1288(e).
6. Id. § 1365(a)(2). Private citizens may sue to compel the EPA to take any action that the court views as nondiscretionary under the Act. Id. For example, if the EPA attempts to approve a plan on management agency designation that does not meet the statutory requirements, a citizen plaintiff could argue convincingly that the EPA has a nondiscretionary duty to withhold approval pending the necessary modifications. Similarly, once a plan has received approval, a citizen could sue to prevent the EPA from making a construction grant or issuing a discharge permit that does not comply with the plan.
7. Although the statute does not specify the appropriate geographic scope of planning areas, it relates 208 boundaries to "urban-industrial concentrations" rather than any existing political jurisdictions. Id. § 1288(a)(2).
8. The text accompanying notes 52-78 infra discusses the land use issue in greater detail.
9. The text accompanying notes 52-69 infra discusses the nonpoint source issue in greater detail.
10. In 1972 the 267 Standard Metropolitan Statistical Areas (SMSAs) included 16,802 general purpose local governments. The "typical" SMSA

had two counties, 13 townships, 21 cities, 18 school districts, and 31 special districts. U. S. Advisory Commission on Intergovernmental Relations, Regional Decision Making: New Strategies for Substate Districts 2 (1973).

11. 33 U.S.C. § 1288(c)(1) (Supp. IV, 1974) (emphasis added).
12. Id.
13. 40 C.F.R. § 130.15(2) (1976).
14. 33 U.S.C. § 1288(c)(2)(A) (Supp. IV, 1974) (emphasis added).
15. Id. § 1288(c)(2)(B).
16. See id. § 1288(c)(2)(C).
17. The text accompanying notes 87-91 infra discusses this issue in greater detail.
18. 40 C.F.R. § 130.15(e) (1976).
19. 33 U.S.C. § 1288(d) (Supp. IV, 1974).
20. Id. § 1288(c)(2)(H).
21. The text accompanying notes 30-32 infra discusses the question of sanctions in more depth.
22. 33 U.S.C. § 1288(c)(2) (Supp. IV, 1974). See also 40 C.F.R. § 131.11(o) (1976).
23. 33 U.S.C. § 1288(c)(2)(C) (Supp. IV, 1974).
24. Id. § 1292(2) (emphasis added).
25. Id. § 1288(d).
26. Id. § 1288(c)(2)(I).
27. Id. § 1362(18).
28. 40 C.F.R. § 35.908-8 (1976). A user in these categories may be excluded from the industrial cost recovery system by showing that it will

introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

29. See text accompanying notes 39-41, 79-86 infra.

30. 33 U.S.C. § 1288(c)(2)(H) (Supp. IV, 1974).

31. The Act authorizes the EPA and, in certain circumstances, the states to bring enforcement actions against permit violators and persons discharging without a permit. In a federal enforcement suit, civil penalties range up to \$10,000 per day per violation. Id. § 1319. The Act also expressly empowers the EPA to seek a court-enforced sewer connection moratorium upon a violation of permit conditions. Id. § 1342(h).

32. EPA, Guidelines for State and Areawide Water Quality Management Program Development at 9-9 (1976).

33. 33 U.S.C. § 1288(c)(2)(D) (Supp. IV, 1974).

34. 40 C.F.R. § 131.11(o)(2)(iv) (1976).

35. 33 U.S.C. § 1288(c)(2)(E) (Supp. IV, 1974).

36. Id. § 1284(b)(1)(A). Operation and maintenance costs encompass "replacement costs," which exclude local capital costs and recapitalization, but include expenditures for obtaining equipment and accessories.

37. 40 C.F.R. § 35.935-13(b).

38. 33 U.S.C. § 1284(b)(1)(B) (Supp. IV, 1974).

39. 40 C.F.R. § 35.928-1(a)-(c) (1976).

40. Id. § 35.928-2(a).

41. Id. § 35.928-2(b).

42. 33 U.S.C. § 1288(c)(2)(F) (Supp. IV, 1974)

43. 33 U.S.C. § 1288(c)(2)(G) (Supp. IV, 1974)

44. Id. § 1284(b)(1)(A); 40 C.F.R. § 35.935-13(b)(5) (1976).

45. 40 C.F.R. § 131.11(o)(2)(vii) (1976).
46. Id. § 1288(c)(2)(A).
47. Id. § 1288(b)(2)(C).
48. 40 C.F.R. §§ 130.15(a), 131.11(o)(1) (1976).
49. Id. §§ 130.15(d), 131.11(o)(2).
50. Id. § 131.11(n)(2)-(3).
51. Id. § 130.15(d).
52. Id. § 1288(b)(2)(A).
53. Id. § 1288(b)(2)(F)-(I).
54. Id. § 1288(b)(2)(J).
55. Id. § 1288(b)(2)(K).
56. 40 C.F.R. § 131.11(j)(3)(vii) (1976).
57. 33 U.S.C. § 1342 (Supp. IV, 1974).
58. 40 C.F.R. § 131.11(j)(1) (1976).
59. Id. § 130.2(q).
60. Id. § 131.11(j)(1).
61. Id. § 131.11(j)(2).

62. 33 U.S.C. § 1342 (Supp. IV, 1976). The EPA administers the NPDES program unless a state demonstrates adequate state authority and commitment to carry out the program effectively within the state's boundaries.

63. The Act defines "navigable waters" as "waters of the United States." Id. § 1362(7). The courts have interpreted these terms very broadly to encompass non-navigable tributaries of navigable waters and wetlands above the mean high water line. See United States v. Ashland Oil & Transp. Co., 504 F.2d 1317, 1318 (6th Cir. 1974); United States v. Holland, 373 F. Supp. 665 (M.D. Fla. 1974). See also 40 C.F.R. § 125.1(o) (1976).

64. 33 U.S.C. § 1362(14) (Supp. IV, 1974).
65. Id. § 1288(e).
66. See text accompanying note 64 infra.
67. NRDC v. Train, 396 F. Supp. 1393 (D.D.C. 1975).
68. 41 Fed. Reg. 11303, 24709, 28493 (1976).
69. 42 Fed. Reg. 6846 (1977).
70. 33 U.S.C. § 1288(b)(2)(C)(ii) (Supp. IV, 1974).
71. See id. §§ 1254(h)(B), 1281(d)-(e), 1288(c)(2)(B), 1316(a)(3), 1316(a)(5), 1321(a)(10)-(11).
72. Id. § 1362(16).
73. Id. § 1362(12) (emphasis added).
74. 40 C.F.R. § 131.11(n)(3)(ii) (1976) (emphasis added).
75. 40 C.F.R. § 403.2(c) (pretreatment regulations proposed Feb. 2, 1977; 42 Fed. Reg. 6476).

76. The Senate Report stated:

Adjacent communities and industries are under no mandate to coordinate land use or water quality planning activities. . . . Such diffuse and divergent programs not only intensify pollution problems but they prevent the use of economies of scale, efficiency of treatment methods, and most importantly, coherent, integrated and comprehensive land use management.

Senate Comm. on Public Works, 93d Cong., 1st Sess., A Legislative History of the Water Pollution Control Act Amendments of 1972 at 1454 (Comm. Print 1973) (emphasis added).

77. Congress has considered but refused to pass land use legislation for seven consecutive years. See H.R. 3510 and 5.984, 94th Cong., 1st Sess. (1975); H.R. 10294 and 5.268, 93d Cong., 1st Sess. (1973); H.R. 7211 and 5.632, 92d Cong., 2d Sess. (1972); 5.3354, 91st Cong., 2d Sess. (1970).

78. Legislative History, supra note 76, at 1445.

79. 33 U.S.C. § 1288(b)(2)(C)(iii) (Supp. IV, 1974).

80. Id. § 1317(b).

81. The Act expressly reserves to state and local governments the right to impose pretreatment standards not in conflict with EPA standards. Id. § 1317(b)(4).

82. 40 C.F.R. § 403 (proposed Feb. 2, 1977; 42 Fed. Reg. 6476). For the 1973 standards, see 40 C.F.R. § 128 (1976).

83. 40 C.F.R. § 403 (proposed Feb. 2, 1977; 42 Fed. Reg. 6476).

84. Id. § 403.1.

85. Id. § 403.7(a)(3).

86. Id. § 403.9.

87. 33 U.S.C. § 1288(c)(2)(B) (Supp. IV, 1974).

88. See text accompanying note 24 infra.

89. 40 C.F.R. § 131.11(o)(2)(ii) (1976).

90. 33 U.S.C. § 1288(c)(2)(C) (Supp. IV, 1974).

91. Guidelines, supra note 32, at 9-1.

2-i

**A Comparative Analysis of
Section 208 and Existing
Authority for Water Quality
Management in Texas**

II. A COMPARATIVE ANALYSIS OF SECTION 208 AND TEXAS AUTHORITY FOR WATER QUALITY MANAGEMENT

WASTE TREATMENT AUTHORITY

AUTHORITY TO DESIGN, CONSTRUCT, OPERATE, AND MAINTAIN TREATMENT WORKS

Section 208(c)(2)(C) provides that a management agency or agencies must have adequate authority, directly or by contract, to design, construct, operate, and maintain waste treatment works.¹ This chapter discusses direct waste treatment authority at this point and treats the question of intergovernmental contracting for waste treatment services under other headings.²

Both general law and home rule cities³ in Texas have authority to construct and operate sewage collection and treatment systems⁴ and to condemn private property for that purpose.⁵ Both classes of city may own and operate treatment plants located outside corporate limits and may extend sewer lines to serve persons and corporations beyond corporate limits.⁶ The Texas courts have construed the term "sewers" to encompass storm sewers and drainage facilities for controlling storm water.⁷ In addition, home rule cities have express statutory authority to provide drains, ditches, storm sewers, and similar structures.⁸

Texas counties have statutory authority to construct sewers and treatment plants, but financial restrictions apparently have prevented all counties from doing so. Article 2352 authorizes county commissioners' courts to levy ad valorem taxes, up to a maximum of 25 cents per \$100 valuation, for the construction of "public buildings, streets, sewers, water works, and other permanent improvements."⁹ Counties also may construct canals, drains, levees, and other flood control facilities.¹⁰ Furthermore, the Attorney General has

ruled that a statute authorizing counties to expend general revenues "in behalf of public health and sanitation"¹¹ provides a sufficient legal basis for counties to plan, construct, operate, and maintain a local or regional waste water collection and treatment system.¹² This authority, however, has limited practical value because treatment works require long-term debt financing, rather than financing from current revenues, and counties have no express authority to issue bonds for waste treatment purposes.¹³

Article XVI, Section 59 of the Texas Constitution, known as the Conservation Amendment, empowers the legislature to create special districts with the power of taxation for the purpose of protecting and conserving all of the state's natural resources.¹⁴ In 1954, the Texas Supreme Court held that districts created under Article XVI, Section 59 have authority to construct and operate sewage treatment facilities:

The Conservation Amendment to our Constitution certainly permits the purification of water before it returns to the groundwater table and the river system. The protection of the purity of the waters of this State is a public right and duty under the Conservation Amendment.¹⁵

The Regional Waste Disposal Act of 1971 authorizes all districts created pursuant to the Conservation Amendment--which includes all river authorities and nearly all water districts--to "acquire, construct, improve, enlarge, extend, repair, operate and maintain one or more disposal systems."¹⁶

Several of the Act's definitions clarify the meaning of this phrase:

- (1) "disposal system" means any system for disposing of waste, including sewer systems and treatment facilities;¹⁷
- (2) "waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of the water in the state, including storm waters.¹⁸

- (3) "sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, ¹⁹ devices, and appurtenant appliances used to transport waste.

Finally, the Act's definition of "treatment facility" tracks the definition of "treatment works" in Public Law 92-500 almost word for word.²⁰

Although the Regional Waste Disposal Act provides all Conservation Amendment districts with waste treatment authority, many such districts have a separate statutory authorization as well. A 1975 amendment to the enabling legislation of the North Texas Municipal Water District empowered it to:

. . . collect, transport, process, treat, dispose of, and control all municipal, domestic, industrial, or communal waste whether in fluid, solid, or composite state, including specifically the control, abatement, or reduction of all types of pollution.²¹

The Trinity River Authority has authority to "construct, own and operate sewage gathering, transmission, and disposal services."²² In addition, municipal utility districts have express authority for constructing and operating facilities for collecting and treatment or disposing of liquid wastes, including storm water.²³

AUTHORITY TO TREAT INDUSTRIAL WASTES

Section 208(c)(2)(I) requires a management agency or agencies to have the power to accept industrial wastes for treatment.²⁴ All local governments in Texas that own or operate sewage collection and treatment systems have authority to treat industrial wastes. The Texas Water Quality Act defines "waste" to include industrial waste²⁵ and defines "industrial waste" to mean "waterborne liquid, gaseous, or solid substance that results from any process of industry, manufacturing, trade, or business."²⁶

AUTHORITY TO REFUSE WASTES FROM NONCOMPLIANT MUNICIPALITIES AND SUBDIVISIONS

Section 208(c)(2)(H) states that a management agency or agencies must

have the authority to refuse to receive wastes from any municipality or subdivision of a municipality that does not comply with any applicable plan provision.²⁷ There exist four general situations in which a management agency might exercise this authority:

- (1) a management agency could deny a new sewer extension to a private subdivision, industrial facility, or individual that refuses to comply with the plan;
- (2) a management agency could deny a new sewer extension to a municipality or other local government that desires to purchase waste treatment service but refuses to comply with the plan;
- (3) a management agency could discontinue ongoing waste treatment service to a private subdivision, industrial facility, or individual that violates the plan, and could refuse to resume service until compliance is achieved;
- (4) a management agency could discontinue ongoing waste treatment service to a municipality or other local government that violates the plan, and could refuse to resume service until compliance is achieved.

The separate consideration of each of these situations simplifies analysis of section 208(c)(2)(H) in the context of Texas law.

To illustrate the first situation, an areawide plan might call for land developers to meet construction standards that minimize erosion and sedimentation, thereby reducing runoff related pollution. A local government generally has broad discretion to refuse to extend public utilities to specific areas within its service jurisdiction, provided that it acts nonarbitrarily and for a legitimate public purpose. For example, in City of Snyder v. Bass the court of civil appeals held that although a city must make reasonably diligent efforts to furnish utilities to developing areas, the extension of water and sewer lines lies wholly within the sound discretion of the city council.²⁸ Similarly, in Crownhill Homes, Inc. v. City of San Antonio the court stated the accepted rule:

[A] municipality exercises a discretionary function in deciding whether or not to extend its system to an entirely new section . . . and cannot be compelled to do so at the instance of a prospective customer, at least if its basis for refusing is in any way reasonable and does not, therefore, involve any abuse of discretion, or arbitrary or fraudulent action.²⁹

In Crownhill Homes the court further held that a municipality may impose reasonable restrictions, including the construction of streets, drains, and water and sewer lines that meet city specifications and the donation of those improvements to the city, as conditions precedent to the subdivision of land and that such requirements do not amount to a taking of private property without just compensation.³⁰ Since the preservation of water quality plainly qualifies as a legitimate public purpose, the Bass and Crownhill Homes cases indicate that a city or special district designated as a 208 management agency could legally require compliance with applicable provisions of an areawide plan as a prior condition of extending new sewer service to private customers.

The second situation differs from the first in that it hypothesizes a local government, rather than a private development, seeking waste treatment service from a management agency. An areawide plan might impose affirmative water pollution control duties on a prospective customer city. For example, a plan might call for a customer city to regulate a particular nonpoint source problem occurring within its boundaries and to assure pretreatment of industrial wastes generated within its jurisdiction. As a general rule, local governments negotiating an intergovernmental agreement enjoy freedom of contract and may insist on any provisions they deem desirable.³¹ The Regional Waste Disposal Act, which authorizes Conservation Amendment districts to make treatment services available to other public agencies on a contract basis, states that such contracts may include any "terms the district or the governing body of the public agency consider appropriate or necessary."³² Thus, as a matter of

contract law, a city or special district serving as a 208 management agency could refuse to provide new treatment service to a municipality or other local government that refuses to agree to comply with the plan.

The third situation raises the possibility of cutting off the treatment service of a private entity upon violation of the plan. By way of illustration, an industrial installation might repeatedly fail to meet applicable pretreatment requirements or a large commercial facility might refuse to take measures necessary to abate pollution resulting from parking lot runoff. Local governments in Texas have authority under current law to terminate treatment service for violations that relate directly to the treatment system. Numerous statutes provide treatment system operators the power to cut off service for nonpayment of sewer charges or "other abuses"³³ and the courts have upheld those statutes.³⁴ Furthermore, the Texas Water Quality Act authorizes every treatment system operator to enact and enforce rules and regulations to control the type, character, and quality of waste discharged into its system.³⁵ It is problematical, however, whether a local government could legally discontinue service for a plan violation relating to nonpoint source pollution rather than to the treatment system. Dictum in a recent Texas case³⁶ involving the termination of water service for nonpayment of garbage collection charges suggests that the courts take a flexible view of the police power in the context of environmental protection. The court said:

[G]arbage disposal and water supply are closely related from a sanitation standpoint and we can find nothing arbitrary or unreasonable about this method of collecting service charges. . . . Environmental conditions have changed radically Anti-pollution legislation has been enacted at both the federal

and state levels. The problem of garbage disposal and waste disposal is of paramount importance. Police power is not static and unchanging. As the affairs of the people and government change and progress, so the police power changes and progresses to meet the needs.³⁷

The reasoning of this case seems to support the proposition that a city or special district designated as a management agency could cut off waste treatment service to a private entity as a means of enforcing plan provisions not related to the treatment system. Nevertheless, the law on this point remains uncertain at the present time.

The fourth situation deals with the termination of ongoing waste treatment service to a municipality or other local government that fails to comply with applicable plan provisions. Assume, for example, that a city purchases treatment service from another city under a long-term contract entered into before the initiation of the areawide planning process and that the completed plan calls for the customer city to carry out certain water pollution control activities related to nonpoint source control. The terms of the preexisting contract would govern the legal rights and responsibilities of the parties and would not authorize the provider city to cut off service for noncompliance with the plan, since the plan did not exist when the parties wrote the contract. In the context of this hypothetical, section 208(c)(2)(H), if interpreted literally, appears to require a contract amendment to allow the provider city to terminate service to the customer city for failure to comply with the plan. This problem would probably arise most commonly when the plan violation relates to nonpoint source pollution, because most preexisting waste treatment contracts include provisions dealing with industrial pretreatment, sewer maintenance, and other factors directly related to the treatment system.³⁸

To summarize, Texas cities and special districts that operate waste treatment systems possess authority under existing law to deny new sewer

service to municipalities and subdivisions that refuse to comply with applicable plan provisions and generally appear to have authority to terminate ongoing service for plan violations that relate to the treatment system. They may not have the power, however, to terminate service for plan violations not directly related to the treatment system, such as a failure to carry out necessary nonpoint source control programs.

FINANCIAL AUTHORITY

AUTHORITY TO ACCEPT AND UTILIZE GRANTS

Section 208(c)(2)(D) requires the management agency or agencies to have authority to accept and utilize grant funds for waste treatment management purposes.³⁹ The Texas Water Quality Act authorizes all local governments, including cities, counties, and Conservation Amendment districts, to execute agreements with each other and with the Texas Water Quality Board (TWQB):

. . . for the transfer of money or property from any party to the agreement to another party for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.⁴⁰

The Trinity River Authority, the North Texas Municipal Water District, and municipal utility districts have express authority to accept grant funds from the federal government.⁴¹ Furthermore, the TWQB may accept funds from any federal agency for research, development, investigation, planning, studies, programming, and construction related to water quality control.⁴²

AUTHORITY TO RAISE REVENUES, INCLUDING WASTE TREATMENT CHARGES

Section 208(c)(2)(E) provides that a management agency or agencies must have adequate authority to raise revenues, including the assessment of waste treatment charges.⁴³ The Texas Water Quality Act empowers each city, county, water district, and river authority that owns or operates a waste treatment

system to establish the charges and assessments to be collected from all persons discharging into the system.⁴⁴ The charges and assessments may include user charges, connection fees, and any other methods of obtaining revenue from the treatment system.⁴⁵ In establishing waste treatment charges, a local government must consider the following factors:

- (1) the volume, type, character, and quality of the waste of each user or class of users;
- (2) the techniques of treatment required;
- (3) any capital costs and debt retirement expenses of the treatment system required to be paid for from the charges;
- (4) the costs of operating and maintaining the system to comply with applicable laws, permits, rules, and orders; and
- (5) any other costs directly attributable to providing the treatment service under standard, accepted cost-accounting practices.⁴⁶

Thus local governments in Texas have statutory authority to charge proportionate waste treatment charges as prescribed by sections 204 and 208(c)(2)(E).

Cities, counties, and certain Conservation Amendment districts also have the power to raise revenues by taxation. Cities having a population of 5,000 or less may levy a tax not to exceed \$1.50 per \$100 valuation per year for current expenses and for "the construction or purchase of public buildings, water works, sewers, and other permanent improvements."⁴⁷ Cities having a population of more than 5,000 may levy a tax not to exceed \$2.50 per \$100 valuation per year, for the same purposes.⁴⁸ In addition, with the approval of a majority of the voters, any city may adopt a sales tax of one percent of receipts on taxable items, the revenues to be used for "the benefit of the city."⁴⁹ Counties may levy a tax not to exceed 25 cents per \$100 valuation per year, for the erection of public improvements.⁵⁰ The Trinity River Authority, with voter approval, may levy a tax not to exceed 15 cents

per \$100 valuation⁵¹ and the North Texas Municipal Water District, with voter approval, may levy unlimited taxes,⁵² but neither agency has ever utilized its taxing power. Municipal utility districts, with voter approval, may levy both a maintenance tax and a tax for general obligation bonds.⁵³

AUTHORITY TO INCUR DEBT

Short-Term Debt. Section 208(c)(2)(F) states that a management agency or agencies must have authority to incur short-term indebtedness.⁵⁴ Current Texas law provides virtually all potential management agencies with the power to borrow money or to enter into contracts, which generally encompasses the power to incur short-term debt. Under the Interlocal Cooperation Act, any city, county, special district, or other political subdivision may contract with another local government for governmental purposes.⁵⁵ In addition, general law cities have express statutory authority to contract with any person,⁵⁶ and home rule cities possess the authority to contract as a power incident to self government.⁵⁷ The courts have held that counties may enter into and bind themselves by contracts with any person.⁵⁸ Finally, the Texas Water Quality Board,⁵⁹ the Trinity River Authority,⁶⁰ the North Texas Municipal Water District,⁶¹ and municipal utility districts⁶² have express authority to enter into loan agreements.

Long-Term Debt. Section 208(c)(2)(F) also requires that a management agency or agencies have authority to incur long-term indebtedness.⁶³ Cities, counties, and Conservation Amendment districts have authority to incur long-term debt in various forms.

Texas municipalities may incur long-term debt through the issuance of general obligation bonds, revenue bonds, and certificates of obligation.

Both general law and home rule cities may issue general obligation bonds for the purchase or construction of water works, sewers, and other permanent improvements, if a majority of the voters approve.⁶⁴ A city may not incur a long-term debt without levying a tax sufficient to pay the interest and to provide a sinking fund of two percent of the principal.⁶⁵ The municipal tax rate ceilings of \$1.50 per \$100 valuation for cities of 5,000 population or less and \$2.50 per \$100 valuation for cities greater than 5,000 population⁶⁶ effectively limit the total amount of tax-secured indebtedness that a city may incur. Cities in Texas may also issue revenue bonds secured by a pledge of income from the operation of municipal utilities, including sewer systems.⁶⁷ The expense of operating and maintaining the utility system has first lien against system revenues,⁶⁸ and any excess revenues not needed for operation and maintenance or debt retirement may be used for general municipal purposes if the bond authorization so provides.⁶⁹ With certain exceptions, the voters must approve any revenue bond issue larger than \$10,000.⁷⁰ The Certificate of Obligation Act of 1971⁷¹ provides additional financial capability for cities by authorizing the issuance of certificates secured by taxes without approval of the voters. A city may issue certificates of obligation for the purpose of paying any contractual obligation incurred for the construction of any public works, for the purchase of materials, supplies, equipment, machinery, land, and rights of way, or for the payment of contractual obligations for professional services.⁷² In certain cases, cities may sell certificates for cash and apply the proceeds for specified purposes.⁷³

Texas counties have limited capacity for long-term financing in comparison to Texas cities. Counties do not have any independent authority

to issue either tax or revenue bonds for waste treatment purposes.⁷⁴ Article 969b empowers any county having a population of more than 350,000, when acting jointly with one or more cities within its boundaries, to issue tax secured bonds for condemning or purchasing land and "improving or equipping the same" for enumerated purposes that include "sewage plants and systems."⁷⁵ Counties having fewer than 350,000 in population may issue certificates of obligation in the same manner as cities.⁷⁶

All Conservation Amendment districts may issue revenue bonds for waste treatment purposes and certain districts have specific authority to utilize tax bond financing. Under the Regional Waste Disposal Act, any Conservation Amendment district may issue revenue bonds secured by a pledge of income from its waste treatment system.⁷⁷ The statute does not require voter approval, but does direct districts with any outstanding bonds to fix and collect rates and charges sufficient to pay operation and maintenance costs as well as principal and interest on the bonds, and to provide and maintain the funds created by the resolution authorizing the bonds.⁷⁸ The North Texas Municipal Water District⁷⁹ and the Trinity River Authority⁸⁰ each have authority to issue revenue bonds and, with voter approval, bonds secured by taxes or a combination of revenues and taxes. Municipal utility districts also may issue revenue bonds and, with voter approval, tax and combination tax and revenue bonds.⁸¹

AUTHORITY TO ASSURE THAT EACH PARTICIPATING COMMUNITY PAYS ITS PROPORTIONATE SHARE OF TREATMENT COSTS

Section 208(c)(2)(G) provides that a management agency or agencies must have authority to assure that each community participating in the implementa-

tion of an areawide plan pays its proportionate share of treatment costs.⁸² Texas law governing interlocal contracting for waste treatment service and cooperative financing of treatment systems provides several alternative methods for assuring that each participant in a joint treatment program pays its proportionate share of both capital costs and operation and maintenance costs.

Any city that provides treatment service beyond its corporate boundaries to another city, a military establishment, or unincorporated territory may issue revenue bonds secured wholly or partially by a pledge of income resulting from such service, including revenues from contracts with other cities or military establishments.⁸³ State law directs provider cities to set rates and contract payments at a level sufficient to generate enough income to pay for operation and maintenance costs of the system and the expenses of debt retirement.⁸⁴

The Regional Waste Disposal Act authorizes any Conservation Amendment district to issue revenue bonds for waste treatment purposes secured by a pledge of income from one or more contracts with other public agencies,⁸⁵ and to allocate the costs of treatment among those agencies.⁸⁶ A public agency--defined as any governmental unit having the power to own and operate a waste treatment system⁸⁷--that purchases treatment service from a district may pay for the service with:

- (1) revenue from its own water system, sewer system, both systems, or combined water and sewer system;
- (2) taxes, if the agency has taxing power and obtains voter approval in the same fashion required for bond issuance; or
- (3) a combination of taxes and water and/or sewer system revenues.⁸⁸

In addition, the Act empowers districts to utilize the proceeds of bonds issued for the purpose of constructing a waste treatment system, including bonds payable wholly or partially from taxes, to purchase capacity in a treatment system owned by another public agency.⁸⁹ A district may also issue bonds payable wholly or partially from taxes specifically for the purpose of purchasing capacity in another public agency's treatment system, if the voters of the district authorize the issuance of bonds either for that purpose or for the purpose of constructing a treatment system.⁹⁰

Both the Trinity River Authority and the North Texas Municipal Water District have special statutory authority for financing regional waste treatment systems and assuring a proportionate allocation of treatment costs. Article 1109i empowers any city within the boundaries of the Trinity River Authority to contract with the Authority for treatment service⁹¹ and to pay for such service with water and sewer revenues,⁹² with taxes if the voters approve,⁹³ or with both. The statute requires the Authority to utilize income received from treatment service contracts with cities only to pay the operation and maintenance costs of, and to retire the bonds issued to construct, treatment works serving the cities.⁹⁴ The enabling legislation of the North Texas Municipal Water District authorizes any city, public agency, or political subdivision to contract with the District for waste treatment service⁹⁵ and to pledge water, sewer, and other revenues to the fulfillment of such contract obligations.⁹⁶ Any city, with voter approval, may also pledge tax revenues.⁹⁷ The District has express authority to issue revenue bonds secured by a pledge of income from contracts for treatment service.⁹⁸

REGULATORY AUTHORITY

Section 208(b)(2)(C) provides that each areawide plan must include a

program to: (1) provide control or treatment of all point and nonpoint sources of pollution; (2) regulate the location, modification, and construction of any facilities that may result in any discharge of pollutants; and (3) assure that all industrial and commercial wastes discharged into public treatment system meet applicable pretreatment standards.⁹⁹

Section 208(c)(2)(A) requires a management agency or agencies to have adequate authority to carry out appropriate portions of the plan.¹⁰⁰ Thus a management system must have the legal capacity to implement the regulatory measures called for in the approved plan.

This section of the report catalogues water quality related regulatory authority under current Texas law that may serve as a basis for the regulatory scheme required by section 208. It is important to note that many types of regulatory measures potentially apply to more than one form of pollution. Subdivision regulations, for example, could contain provisions that deal with both the location of discharge related facilities and nonpoint source pollution resulting from construction activities. Similarly, discharge permits could apply to runoff related pollution as well as point source pollution. At the time of this writing the areawide planning process in North Central Texas has not reached the stage of identifying necessary regulatory measures and therefore it is impossible to determine the exact nature of regulatory authority that will be needed to implement the plan. A careful examination of existing authority, however, may make it possible to design a satisfactory regulatory program that will not require any new state legislation.

STREAM STANDARDS

The TWQB has sole and exclusive authority under state law to set and

revise water quality standards for all waters in the state.¹⁰¹ In establishing or amending standards, the TWQB must hold a public hearing at which any person may appear and present evidence and must also consult with the Texas Water Development Board and the Texas Water Rights Commission to make certain that the proposed standards do not conflict with the objectives of the state water plan.¹⁰² Any local government may make written recommendations to the TWQB concerning the proper level of water quality standards for water within the local government's boundaries.¹⁰³

DISCHARGE PERMITS

The TWQB has responsibility for issuing permits for the discharge of wastes into or adjacent to water in the state,¹⁰⁴ including wastes from sewage treatment systems, industrial facilities, parks and recreational areas, animal feedlots, and facilities for processing agricultural products.¹⁰⁵ Each permit must state the conditions of its issuance which must include the following criteria:

- (1) the duration of the permit;
- (2) the location of the point of discharge of the waste;
- (3) the maximum quantity of waste that may be discharged;
- (4) the character and quality of waste that may be discharged;
and
- (5) any monitoring and reporting requirements.¹⁰⁶

The TWQB may revoke or suspend a permit for noncompliance with its conditions¹⁰⁷ and may sue any person discharging without a permit or in violation of permit conditions for civil penalties, injunctive relief, or both.¹⁰⁸

The Attorney General may also sue to enforce discharge permits but only at the request of the TWQB.¹⁰⁹ A local government may bring suit for permit violations occurring within its territorial jurisdiction.¹¹⁰

Unlike the National Pollutant Discharge Elimination System, the state permit program provides a means of controlling nonpoint as well as point sources of pollution.¹¹¹ The TWQB may issue permits for any "discharge of waste."¹¹² The Texas Water Quality Act defines the term "to discharge" to mean:

. . . to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.¹¹³

The Act also defines "waste" as "sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste."¹¹⁴ "Other waste" means:

. . . garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance . . . that may cause impairment of the quality of water in the state [including] tail water or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.¹¹⁵

Under these broad definitions, the TWQB could require a person who allows any form of pollution to enter the water in virtually any manner to obtain a discharge permit. Furthermore, the Attorney General has ruled that the TWQB may establish permit conditions other than the five criteria listed in the statute.¹¹⁶ Therefore, the state discharge permit program could serve as a mechanism for regulating most, if not all, nonpoint sources of pollution and permits could incorporate "best management practices" developed in the areawide planning process.

The Texas Water Quality Act contains two provisions that provide the administrative flexibility necessary to extend the discharge permit program to cover nonpoint sources. First, the TWQB may regulate waste discharges by general rule, rather than individual permit, whenever it determines:

- (1) that the combined effects of several small quantity discharges for which it is impractical to issue individual permits threaten the water quality of an area; or
- (2) that the nature of an activity that produces a waste discharge makes the issuance of individual permits unnecessarily burdensome both to the discharger and the TWQB.¹¹⁷

Thus the TWQB has authority to promulgate regulations pertaining to nonpoint pollution sources on an areawide or statewide basis. Second, the TWQB may delegate any of its powers and functions, including the authority to issue permits and rules governing waste discharges, to any city, county, river authority, or water district.¹¹⁸ This provision would allow, at the option of the TWQB, decentralized administration of the discharge permit program as applied to nonpoint source pollution.

MUNICIPAL WATER POLLUTION CONTROL PROGRAMS

State law requires all cities having a population of 5,000 or more, and permits any city, to establish a water pollution control and abatement program.¹¹⁹ A municipal program must encompass the entire city and may also include all or part of the city's extraterritorial jurisdiction.¹²⁰ A program must include the services and functions that, in the judgment of the city or as may be reasonably required by the TWQB, will provide effective water pollution control and abatement for the city, including:

- (1) development and maintenance of an inventory of all significant waste discharges within the city and, where the city so elects, within its extraterritorial jurisdiction, regardless of whether the TWQB has authorized the discharges;
- (2) monitoring of all discharges included in the inventory;
- (3) sampling and testing of the discharges being monitored to determine whether they comply with applicable permits, orders, and regulations of the TWQB, and whether they should be covered by a permit from the TWQB;

- (4) in cooperation with the TWQB, enforcement of applicable permits, orders, and regulations, including legal proceedings where necessary; and
- (5) development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution from generalized discharges of waste not traceable to a specific source, including storm sewer discharges and urban runoff from rainwater.¹²¹

The fifth requirement has particular significance in the context of section 208 because it provides clear authority for cities of all sizes to enact ordinances and to implement control techniques directed at runoff related pollution problems.

An Attorney General's opinion states that these provisions do not merely consolidate authority provided by other statutes, but rather they confer "broad powers"¹²² to establish a water pollution control program:

Whatever authority is necessary to perform the actions permitted or required under [this statute] is necessarily implied whether or not that authority may be granted independently by other statutes.¹²³

Therefore, a city may regulate private sewage facilities within its municipal boundaries and within its extraterritorial jurisdiction¹²⁴ even though other sections of the Texas Water Quality Act expressly authorize the TWQB and counties to regulate private sewage facilities.¹²⁵

LAND USE AND DEVELOPMENT CONTROLS

Zoning. Texas cities may enact zoning ordinances "for the purpose of promoting health, safety, morals . . . or the general welfare of the community,"¹²⁶ and to facilitate the adequate provision of water and sewer systems and other public facilities.¹²⁷ Cities may divide themselves into districts in which regulations uniformly applicable throughout each district may govern construction, reconstruction, alteration, repair, or use of buildings, structures, or land.¹²⁸ Furthermore, zoning ordinances may control the

height, number of stories, and size of buildings and other structures; the percentage of lot occupied; size of open areas; and density of population.¹²⁹ The courts have long held that the enactment of zoning laws constitutes a valid exercise of the police power by the legislative branch of government.¹³⁰

Floodplain Zoning. Any city, county, or Conservation Amendment district may take all necessary and reasonable actions to comply with the requirements of the National Flood Insurance Act.¹³¹ Authorized measures include:

- (1) making appropriate land use adjustments to constrict the development of land exposed to flood damage and to minimize damage caused by flood losses;
- (2) guiding the development of proposed future construction, where practicable, away from a location threatened by flood hazards;
- (3) adopting and enforcing permanent land use control measures consistent with the criteria established under the National Flood Insurance Act; and
- (4) declaring property to be in violation of local laws, regulations, or ordinances intended to discourage or otherwise restrict land development or occupancy in floodprone areas.¹³²

In addition, any political subdivision that qualifies for participation in the National Flood Insurance Program may adopt reasonable rules and regulations necessary to implement the preceding authorizations.¹³³

Subdivision Regulation. Each city in Texas has the power to adopt and enforce subdivision regulations within its municipal boundaries¹³⁴ and within its extraterritorial jurisdiction.¹³⁵ A city may review subdivision plats for residential, industrial, and commercial sites and may specify development standards concerning street layout, design, and paving; sidewalks, street markers, and street lights; drainage facilities; water, sewer, and

other utilities; minimum lot sizes; parks and playgrounds; and other reasonable regulations related to the health, safety, and welfare of the community. Absent city approval, a developer may not record a subdivision plat in county records and therefore cannot convey lots by lot and block number.¹³⁶ Other enforcement measures include the imposition of fines, denial of building permits and utilities extensions, and injunctive relief in the courts.¹³⁷

Texas counties have limited authority to adopt and enforce subdivision standards for unincorporated areas.¹³⁸ Counties may establish standards for streets and drainage,¹³⁹ but not for public utilities, lot size, or other matters. A county may enforce its subdivision regulations by denying plat approval and by requiring developers to post performance bonds,¹⁴⁰ but counties do not have authority to impose fines, seek injunctive relief, or deny building permits.

Building Codes. Although neither counties nor cities possess express statutory authority for adopting building codes, the Texas courts have repeatedly held that cities may regulate the construction, maintenance, and repair of buildings as a legitimate exercise of the police power.¹⁴¹ An Attorney General's opinion, however, rules that counties may not adopt building codes.¹⁴² A typical building code controls the design, construction, materials, location, and appurtenant equipment of all new buildings and structures and may require repairs or improvements of existing buildings.¹⁴³ Generally, any person who wishes to construct a building or make substantial repairs must obtain a building permit from the city and must pay a fine for any violation of the building code.

REGULATION OF PRIVATE SEWAGE FACILITIES

The TWQB has authority to regulate all private sewage facilities, including septic tanks, privies, cesspools, sewage holding tanks, injection wells, chemical toilets, and treatment tanks.¹⁴⁴ If the TWQB finds, after a public hearing¹⁴⁵ and consultation with the State Director of Health Resources,¹⁴⁶ that the use of private sewage facilities in an area causes or threatens to cause pollution or injury to public health, it may adopt regulations that:

- (1) limit the number and kind of facilities that may be used in the area;
- (2) prohibit the installation of new facilities in the area;
- (3) require modifications or improvements to existing facilities in the area; and
- (4) provide for a gradual and systematic reduction of the number or kinds of private sewage facilities in the area.¹⁴⁷

In addition, the TWQB may establish a licensing system¹⁴⁸ and may delegate the licensing function to any local government whose boundaries include the area, any local government that the TWQB has designated as a regional treatment system operator for the area, or any Conservation Amendment district that owns or operates a dam or reservoir in the area.¹⁴⁹

Counties possess virtually the same powers as the TWQB for the regulation of private sewage facilities.¹⁵⁰ Any county order, resolution, or regulation, however, must receive the written approval of the TWQB,¹⁵¹ and TWQB orders and regulations prevail over county orders and regulations in the event of a conflict.¹⁵²

Cities do not have express statutory authority to control private sewage facilities, but, as noted earlier, a city may regulate septic tanks as an element of its municipal water pollution control program.¹⁵³

REGULATION OF INDUSTRIAL PRETREATMENT

Each local government that owns or operates a waste treatment system, unless the TWQB grants an exception, must enact and enforce rules and regulations to control the type, character, and quality of waste discharged into the system.¹⁵⁴ A local government may require pretreatment of wastes when necessary to protect the health and safety of personnel operating and maintaining the system and to prevent unreasonable adverse effects on the system.¹⁵⁵

CONTROL OF SOIL EROSION

Soil and water conservation districts (SWCDs), with the assistance of the State Soil and Water Conservation Board, have authority to implement measures to prevent and control soil erosion on state lands and on private lands with the consent of the occupier, to cooperate with and aid any public or private agency in controlling erosion, to construct and maintain soil erosion control structures, and to develop comprehensive plans for the conservation of land and the prevention of soil erosion.¹⁵⁶ SWCDs, with the approval of nine tenths of the voting landowners, may establish land use regulations that require engineering operations, methods of cultivation, and other measures necessary to prevent and control soil erosion, and retirement from cultivation of highly erosive areas.¹⁵⁷ SWCDs have no taxing authority and may not borrow money for more than a one year period.¹⁵⁸

CONTROL OF SOLID WASTE

The Solid Waste Disposal Act designates the TWQB as the state agency responsible for management of industrial solid waste and the State Department of Health Resources as the agency responsible for management of municipi-

pal solid waste.¹⁵⁹ "Industrial solid waste" means solid waste resulting from any process of industry or manufacturing, or mining or agricultural operations, including discarded solid materials suspended or transported in liquid or semi-liquid form, but not including any wastes covered by the Texas Water Quality Act.¹⁶⁰ "Municipal solid waste" means solid waste resulting from municipal, community, trade, business, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other nonindustrial solid waste.¹⁶¹

Each agency has the following authority with respect to its designated responsibilities:

- (1) to develop a state solid waste plan;
- (2) to issue rules and regulations establishing minimum standards of operation for all aspects of solid waste management;
- (3) to inspect and approve solid waste disposal sites;
- (4) to require and issue permits governing the operation and maintenance of solid waste disposal sites;
- (5) to provide advisory and technical assistance to public and private entities concerning solid waste management; and
- (6) to provide financial assistance to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs.¹⁶²

The TWQB and the Department of Health Resources also may bring suit for civil penalties or injunctive relief or both to enforce the provisions of the Act and any regulations or orders thereunder.¹⁶³

Cities, counties, and certain Conservation Amendment districts have authority for management of solid waste. Both general law and home rule municipalities have broad powers under state law to operate solid waste programs and to regulate activities affecting solid waste management.¹⁶⁴

The County Solid Waste Control Act empowers counties to license, construct, own, and operate solid waste disposal facilities with general revenues or with disposal fees.¹⁶⁵ Counties may also issue revenue bonds to finance the construction of solid waste disposal systems.¹⁶⁶ Municipal utility districts¹⁶⁷ and the North Texas Municipal Water District¹⁶⁸ have express authority to construct, own, and operate solid waste collection and disposal systems.

REGULATION OF PESTICIDES, HERBICIDES, AND FERTILIZERS

The Texas Pest Control Act authorizes the TWQB to certify pesticide applicators involved in aquatic pest control.¹⁶⁹ The Act provides that no person may use, discard, dispose of, or store any pesticide or pesticide container in a manner calculated to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.¹⁷⁰ In addition, the Commissioner of Agriculture, after a public hearing, may restrict the use of any pesticide to prevent "unreasonable adverse effects on the environment."¹⁷¹ The Commissioner may also restrict the storage and disposal of pesticides and pesticide containers to prevent pollution of any waterway in a manner harmful to man or wildlife.¹⁷²

The Texas Fertilizer Control Act does not directly provide for the regulation of fertilizer use, but rather for fertilizer manufacturing standards and labelling requirements.¹⁷³ The Act does require, however, that any fertilizer containing a pesticide must be registered under the Pest Control Act.¹⁷⁴ Thus the water quality control measures of the latter statute extend to many fertilizers.

The Commissioner of Agriculture has responsibility for the regulation of the sale, use, and transportation of herbicides.¹⁷⁵ The term "herbicide" means certain specified chemicals and "other such substances used for weed control."¹⁷⁶ Any person who applies herbicides, except persons applying to lawns or land of less than ten acres, must meet the permit requirements of the Commissioner.¹⁷⁷

CONTROL OF SURFACE MINING

The Surface Mining and Reclamation Act authorizes the Texas Railroad Commission to formulate regulations to control surface mining operations and reclamation activities.¹⁷⁸ To obtain a permit to conduct surface mining operations, a person must submit an application and a reclamation plan.¹⁷⁹ Any permit issued must assure that the reclamation program will "stabilize and protect all surface areas affected by the mining and . . . effectively control erosion and attendant air and water pollution."¹⁸⁰ The Act also requires the prevention of pollution from toxic mine drainage, the abatement of pollution from suspended solids added to streamflow through runoff, and the incorporation of environmentally sound engineering practices in the construction of impoundments for the disposal of liquid or solid mine wastes.¹⁸¹

CONTROL OF WASTES RESULTING FROM OIL PRODUCTION

The Texas Water Quality Act authorizes the Railroad Commission to control and dispose of waste and to abate and prevent pollution resulting from activities associated with the production of oil and gas.¹⁸² The Commission may issue permits for such discharges and any permits must conform to standards established by the TWQB.¹⁸³

PERMITS FOR DREDGING ACTIVITIES

The Secretary of the Army, acting through the Corps of Engineers, has authority to issue permits for the discharge of dredged or fill material "into the navigable waters at specified disposal sites."¹⁸⁴ The Secretary may specify proper disposal sites, but the Administrator of the EPA may prohibit or restrict the specification of any such disposal site if he determines, after notice and public hearings, that the discharge of such materials "will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas...wildlife or recreational areas."¹⁸⁵ Applications for federal dredging permits are referred through the state Parks and Wildlife Department and the Governor's Office for review and comment, and through the Water Quality Board for certification. The Act defines "navigable waters" to include "the waters of the United States,"¹⁸⁶ a term the courts have broadly interpreted to encompass wet-lands and minor waterways.¹⁸⁷

State law provides that no person take or disturb any marl or sand of commercial value, or any gravel, shell or mudshell within tidewater limits or freshwater areas not privately owned, without a permit from the Parks and Wildlife Commission.¹⁸⁸ The Commission may grant a permit if it finds that the proposed dredging will not damage landmarks used for navigation; injuriously affect oysters, oyster beds or fish; or change any current that would affect navigation.¹⁸⁹ Dredging permits are not assignable and may be terminated immediately for failure to comply with any condition set by the Commission.¹⁹⁰ Dredging done under state or federal authority does not require a permit.¹⁹¹

GENERAL MANAGEMENT AUTHORITYAUTHORITY FOR INTERGOVERNMENTAL CONTRACTING

Section 208(c)(2)(C) refers to authority, directly or by contract, to design, construct, operate, and maintain treatment works,¹⁹² and section 208(c)(2)(B) requires adequate authority to manage effectively treatment works and related facilities in conformance with the plan,¹⁹³ suggesting that the strength of intergovernmental coordinating mechanisms may provide one measure of a management system's effectiveness. Texas law includes numerous specific authorizations for intergovernmental contracting for water quality management activities, several of which this report has already mentioned.¹⁹⁴ The Interlocal Cooperation Act of 1971¹⁹⁵ provides the only general grant of interlocal contracting power and therefore may prove useful in establishing an areawide water quality management system.

Definition of "Local Government." The Interlocal Cooperation Act originally defined local government to include counties; home rule cities; general law cities, towns, and villages; special districts; school districts; junior college districts; any other legally constituted political subdivision of Texas; and any combination of political subdivisions. In 1975 the Legislature expanded this definition to include any legally constituted political subdivision of any state adjoining Texas.¹⁹⁶

Types of Contract Authorized. Any local government may contract with one or more other local governments to perform governmental functions and services which include, but are not limited to, police protection, fire protection, streets and roads, public health and welfare, library and museum services, waste disposal, planning, engineering, and administrative services.¹⁹⁷

All contracts must state the purpose, terms, objectives, duties, and responsibilities of the contracting parties and must receive approval by the governing body of each contracting party.¹⁹⁸ A local government may not undertake jointly with another local government any function or service that it could not legally undertake alone.¹⁹⁹ Thus a contract that contemplates the "loan" by one local government to another of powers that the latter does not possess has no validity.

Supervision of Performance. The parties to an interlocal agreement may create an administrative agency or designate an existing political subdivision to supervise the performance of the contract.²⁰⁰ The agency or political subdivision may employ personnel and undertake the administrative activities necessary to execute the terms of the contract.²⁰¹

Duration of Contract. The statute imposes no limit on the duration of intergovernmental contracts. It authorizes, but does not require, annual renewal.²⁰² Texas courts have upheld a city's ten-year contract for water supply services against the charge that a city council may not bind its successors.²⁰³ In the absence of some statutory authority, however, a city cannot surrender, delegate or bargain away a governmental function.²⁰⁴

Payment of Contract Obligations. Any party obliged to make payments under an interlocal contract must do so from current revenues available to the paying party.²⁰⁵ Consequently, a local government may not issue bonds or otherwise incur debts to satisfy its contract obligations but must rely solely on current revenues.²⁰⁶

Contracts with State Agencies. Parties to an interlocal contract or agreement may also contract for the performance of governmental functions and services with state departments and agencies, including departments

and agencies of states adjoining Texas.²⁰⁷ For example, the Attorney General has ruled that the Texas Parks and Wildlife Department and counties on the Gulf Coast have authority to contract with each other for the cleaning and maintenance of state park beaches.²⁰⁸

Contracts with Regional Councils of Governments. Regional planning commissions and regional councils of governments are expressly defined as political subdivisions of the State of Texas.²⁰⁹ Therefore these entities constitute local governments within the terms of the Interlocal Cooperation Act. In addition, regional planning commissions and regional councils of governments may contract with one or more member governments to perform any function or service which that government could, by contract, have any private organization without governmental powers perform, provided that no cost or obligation is imposed on any member government not a signatory to the contract.²¹⁰ Pursuant to these provisions, a county and a regional planning commission have the authority to enter into a contract under which the planning commission assumes operational control of the county airport.²¹¹

Waste Treatment Facility Contracts and Leases. The Interlocal Cooperation Act makes special provision for contracts and leases involving water supply and waste treatment facilities or any interest therein.²¹² Such contracts may prohibit the contracting party from obtaining waste treatment services from any other source.²¹³ Under the Act, a local government may not pledge tax revenues to the payment of obligations under a waste treatment facility contract or lease but may pledge revenues generated by fees charged for the use of the facility.²¹⁴ A waste treatment facility contract may extend for any period of time and may provide for termination when bonds

specified in the contract are paid.²¹⁵ These provisions have limited application because of a number of more specific authorizations for the same activities.²¹⁶

AUTHORITY FOR WATER QUALITY MANAGEMENT PLANNING

Section 208(b)(3) requires an annual update of each areawide plan²¹⁷ and EPA guidance materials indicate that the continuous planning function constitutes an element of the overall water quality management system.²¹⁸ Under Texas law, the TWQB, river authorities, and regional councils of governments have authority to carry out continuing water quality management planning. The Texas Water Quality Act empowers the TWQE to prepare plans for different areas of the state and to contract with other public and private entities for assistance in plan preparation.²¹⁹ The TWQB may also make grants or interest-free loans to local governments and regional planning agencies for the development of water quality management plans.²²⁰ The Regional Waste Disposal Act authorizes river authorities to prepare regional plans for water quality management under the supervision of the TWQB.²²¹ Finally, regional councils of governments have authority to engage in comprehensive planning activities including plans for transportation, parks and recreation sites, schools, public utilities, land use, water and sewer facilities, drainage, open spaces, and other items relating to regional development.²²²

FOOTNOTES - CHAPTER II

1. 33 U.S.C. § 1288(c)(2)(C) (Supp. IV, 1974).
2. See text accompanying notes 82-98, 192-216 infra.
3. Typically, cities under 5,000 population must incorporate under the general laws of the state, while cities over 5,000 population may elect to adopt a home rule charter that sets forth the form of municipal government to be utilized. Tex. Rev. Civ. Stat. Ann. arts. 1154, 1175 (1963) [hereinafter, all citations are to Tex. Rev. Civ. Stat. Ann. unless otherwise noted].
 4. Arts. 1015(3), 1015(25), 1108, 1109(b), 1110(c), 1111, 1175(13), 1175(15), 1175(29) (1963).
 5. Art. 1107.
 6. Arts. 1108, 1175(13), 1175(15).
 7. Town of Freeport v. Sellers, 144 Tex. 389, 190 S.W.2d 813 (1945).
 8. Art. 1175(15).
 9. Art. 2352.
 10. Art. 1581c.
 11. Art. 4418f.
 12. Tex. Atty. Gen. Op. No. M-1049 (1972).
 13. See text accompanying notes 74-76 infra.
 14. Tex. Const. Art. XVI, Sec. 59 (1963) (enacted in 1917).
 15. Parker v. San Jacinto County Water Control and Improvement District No. 1, 273 S.W.2d 586 (Tex. 1954).
 16. Tex. Water Code § 25.021 (1972). The Conservation Amendment was adopted to repeal the debt limitations on special districts contained in Article III, Section 52. A few districts created under Article III, Section 52

remain in existence, but the great majority of Texas water districts derive their authority from Article XVI, Section 59. This report uses the term "Conservation Amendment districts" to refer to both categories.

17. Id. § 25.003(10) (Supp. 1976-77).
18. Id. § 25.003(6).
19. Id. § 25.003(8).
20. Id. § 25.003(9).
21. Art. 8280-141 § 27(a)(2) [Tex. Laws 1975, ch. 90, § 1, at 238].
22. Art. 8280-188 § 5(k) [Tex. Laws. 1967, ch. 273, § 1, at 603].
23. Tex. Water Code § 54.201(b)(2)-(3) (1972).
24. 33 U.S.C. § 1288(c)(2)(I) (Supp. IV, 1974).
25. Tex. Water Code § 21.003(4)(1972).
26. Id. § 21.003(9).
27. 33 U.S.C. § 1288(c)(2)(H) (Supp. IV, 1974).
28. 360 S.W.2d 426 (Tex. Civ. App.--Eastland 1962, writ ref'd n.r.e.).

See also note, Control of the Timing and Location of Government Utility Extensions, 26 Stan.L.Rev. 945 (1974).

29. 443 S.W.2d 448, 459-60 (Tex. Civ. App.--Corpus Christi 1968, no writ).
30. Id. at 460-61.
31. Tex. Water Code §§ 25.024-027 (1973)
32. See, e.g. art. 8280-141 § 27(b) (Tex. Laws 1975, ch. 90, § 1(b), at 238); Tex. Water Code § 51.338(c) (1972).
33. See, e.g. art. 8280-141 § 27(b) (Tex. Laws 1975, ch. 90, § 1(b), at 238); Tex. Water Code §§ 51.338(c), 54.204(c)(1972).

34. Bexar County v. City of San Antonio, 352 S.W.2d 905 (Tex. Civ. App.--San Antonio 1961, writ dismiss'd); City of Wichita Falls v. Landers, 291 S.W. 696 (Tex. Civ. App.--Fort Worth 1927, no writ).
35. Tex. Water Code § 21.356(a) (1972).
36. City of Breckenridge v. Cozart, 478 S.W.2d 162 (Tex. Civ. App.--Eastland 1972).
37. Id. at 165.
38. Chapter IV includes an analysis of waste treatment contracts presently in effect in the North Central Texas 208 planning area.
39. 33 U.S.C. § 1288(c)(2)(D) (Supp. IV, 1974).
40. Tex. Water Code § 21.355(a)(2) (1972).
41. Art. 8280-188 § 16(a) [Tex. Laws 1967, ch. 273, § 4, at 606]; art. 8280-141 § 27(h) [Tex. Laws 1975, ch. 90, § 1(h), at 240]; Tex. Water Code § 54.232 (1972).
42. Tex. Water Code § 21.087 (1972).
43. 33 U.S.C. § 1288(c)(2)(E) (Supp. IV, 1974).
44. Tex. Water Code § 21.356(b) (1972).
45. Id.
46. Id.
47. Art. 1026-27.
48. Art. 1028.
49. Art. 1066c (Supp. 1976-77).
50. Arts. 2352, 7048.
51. Art. 8280-188 § 6 [Tex. Laws 1969, ch. 155, § 1, at 486].
52. Art. 8280-141 § 10(e) [Tex. Laws 1951, ch. 62, § 10(e), at 96].
53. Tex. Water Code §§ 54.311, 54.601 (1972).
54. 33 U.S.C. § 1288(c)(2)(F) (Supp. IV, 1974).

55. Art. 4413(32c).
56. Arts. 962, 968.
57. Art. 1176.
58. *Coryell County v. Burk & Corbett*, 4 S.W.2d 283 (Tex. Civ. App.--
Waco 1928, writ dismissed).
59. Tex. Water Code § 21.087 (1972).
60. Art. 8280-188 § 16(a) [Tex. Laws 1967, ch. 273, § 4, at 606].
61. Art. 8280-141 § 27(h) [Tex. Laws 1975, ch. 90, § 1(h), at 240].
62. Tex. Water Code § 54.302 (1972).
63. 33 U.S.C. § 1288(c)(2)(F) (Supp. IV, 1974).
64. Arts. 701, 823, 1175(10).
65. Tex. Const. Art. XI, §§ 5,7 (1963). Any obligation payable from
tax revenues to be collected beyond the budget year of its creation is a
long-term debt for purposes of these constitutional requirements. *McClellan
v. Guerra*, 152 Tex. 373, 258 S.W.2d 72 (1953).
66. Arts. 1026-28.
67. Art. 1111.
68. Art. 1113.
69. Arts. 1113a, 1118a § 9.
70. Art. 1112.
71. Art. 2368a.1 (Supp. 1976-77).
72. Id. § 3(a).
73. Id. § 7.
74. Texas cities and counties have no inherent power to issue bonds,
Lasater v. Lopez, 110 Tex. 179, 217 S.W. 373 (1919), and unlike municipalities,
counties have no general authorization to issue bonds for "permanent improve-
ments."

75. Art. 969b §§ 2-3.
76. Art. 2368a-1 § 1 (Supp. 1976-77).
77. Tex. Water Code § 25.051 (1972).
78. Id. § 25.066.
79. Art. 8280-141 §§ 10(a), 10(e), 13(a), 27(a), 27(h) [Tex. Laws 1951, ch. 62, §§ 10(a), 10(e), 13(a), at 96; Tex. Laws 1975, ch. 90, §§ 1(a), 1(h), at 238-40].
80. Art. 8280-188 § 8(a) [Tex. Laws 1969, ch. 156, § 1, at 488].
81. Tex. Water Code §§ 25.051, 54.501-.505 (1972).
82. 33 U.S.C. § 1288(c)(2)(G) (Supp. IV, 1974).
83. Art. 1118s § 2.
84. Id. § 3.
85. Tex. Water Code § 25.051 (1972).
86. Id. § 25.032.
87. Id. § 25.003(3).
88. Id. § 25.030.
89. Id. § 25.031(c).
90. Id.
91. Art. 1109i § 2.
92. Id. § 3.
93. Id. § 4.
94. Id. § 2.
95. Art. 8280-141 § 27(e) [Tex. Laws 1975, ch. 90, § 1(e), at 239].
96. Id. § 27(g).
97. Id. § 27(e).
98. Id. § 27(h).
99. 33 U.S.C. § 1288(b)(2)(C) (Supp. IV, 1974).

- 100. Id. § 1288(c)(2)(A).
- 101. Tex. Water Code § 21.075 (1972).
- 102. Id. § 21.076.
- 103. Id. § 21.352.
- 104. Id. § 21.079 (Supp. 1976-77).
- 105. Id. § 21.003(4)-(9).
- 106. Id. § 21.081(a) (Supp. 1976-77).
- 107. Id. § 21.081(c)(1) (Supp. 1976-77).
- 108. Id. § 21.253(a).
- 109. Id. § 21.253(c).
- 110. Id. § 21.254.

111. A federal court has held that "all nonpoint sources are excluded from the effluent limitations and the NPDES program." Natural Resources Defense Council, Inc. v. Train, 396 F. Supp. 1393, 1395 (D.D.C. 1975). The court went on, however, to interpret broadly Congress' definition of "point source" so that the NPDES program covers many, but not all, runoff related sources of pollution. Id. at 1401-02.

112. Tex. Water Code § 21.079 (Supp. 1976-77). The Attorney General implicitly recognized that the permit program applies to both point and nonpoint sources in ruling that the TWQB has authority "to condition the granting of its permits to point or non-point sources of water contaminants upon proper site selection." Tex. Att'y Gen. Op. No. H-802 (1976) (emphasis added).

- 113. Id. § 21.003(17).
- 114. Id. § 21.003(4).
- 115. Id. § 21.003(10).
- 116. Tex. Att'y Gen. Op. No. H-802 (1976).

117. Id. § 21.092.
118. Id. § 21.355(b).
119. Id. § 21.357(a).
120. Id. § 21.357(b).
121. Id.
122. Tex. Att'y Gen. Op. No. H-304 (1974).
123. Id.
124. Id.
125. Tex. Water Code § 21.083-.084.
126. Art. 1011a.
127. Art. 1011c.
128. Art. 1011b.
129. Art. 1011a.
130. Lawton v. City of Austin, 404 S.W.2d 648 (Tex. Civ. App.--Austin 1966, writ ref'd n.r.e.).
131. Art. 8380-13 § 5 (Supp. 1975).
132. Id.
133. Id. § 8.
134. Art. 974a.
135. Art. 970a § 4.
136. Art. 974a.
137. Id.
138. Arts. 2372k, 6626a.
139. Id.
140. Id.
141. City of Tyler v. Ingram, 139 Tex. 600, 164 S.W.2d 516 (1947);
Town of Renner v. Wiley, 458 S.W.2d 516 (Tex. Civ. App.--Dallas 1970, no writ).

142. Tex. Att'y Gen. Op. No. H-374 (1974).
143. See e.g. Int'l Conf. of Bldg. Officials, Uniform Building Code (1973).
144. Tex. Water Code § 21.083(a) (1972).
145. Id. §§ 21.083(b).
146. Id. § 21.083(c).
147. Id. §§ 21.083(d)-(e).
148. Id. §§ 21.083(f).
149. Id. §§ 21.083(g) (Supp. 1976-77).
150. Id. § 21.084.
151. Id. §§ 21.084(c).
152. Id. §§ 21.084(d).
153. See text accompanying notes 122-25 supra.
154. Tex. Water Code § 21.356(a),(c) (1972).
155. Id.
156. Art. 165a-4 §§ 1-7.
157. Id. §§ 8.
158. Id. §§ 7(10)-(11).
159. Art. 4477-7 § 3.
160. Id. §§ 2(6).
161. Id. §§ 2(7).
162. Id. §§ 4.
163. Id. §§ 8.
164. Arts. 1015, 1175.
165. Art. 4477-8 § 4.
166. Id. §§ 11.

167. Tex. Water Code § 54.203 (1972).
168. Art. 8280-141 § 27(a)(2) [Tex. Laws 1975, ch. 90, § 1(a)(2),
at 238].
169. Art. 135b-5a (Supp. 1976-77).
170. Id. § 13(b)(2)-(4).
171. Id. § 2(37).
172. Id. § 29.
173. Art. 1082.
174. Id. § 4(f) (Supp. 1976-77).
175. Art. 135b-4.
176. Id. § 2(a).
177. Id. § 4(a).
178. Art. 5920-10 § 7 (Supp. 1976-77).
179. Id. §§ 8,10.
180. Id. § 11(b)(4).
181. Id. § 11(b)(8).
182. Tex. Water Code § 21.261 (1972).
183. Id.
184. 33 U.S.C. § 1344(a) (Supp. IV, 1974).
185. Id. § 1344(c).
186. Id. § 1362(7).
187. United States v. Ashland Oil & Transp. Co., 504 F.2d 1317, 1318
(6th Cir. 1974); United States v. Holland, 373 F. Supp. 665 (M.D. Fla. 1974).
188. Tex. Parks & Wildlife Code § 86.001-.002 (1972).
189. Id. § 86.004.
190. Id. § 86.007-.009.
191. Id. § 86.002.

192. 33 U.S.C. § 1288(c)(2)(C) (Supp. IV, 1974).
193. Id. § 1288(c)(2)(B).
194. See text accompanying notes 82-98 supra.
195. Art. 4413(32c).
196. Id. § 3(1).
197. Id. §§ 3(2), 4(a).
198. Id. § 4(b).
199. Id.
200. Id. § 4(d).
201. Id.
202. Id. § 4(b).
203. Gillam v. City of Fort Worth, 287 S.W.2d 494 (Tex. Civ. App.--Fort Worth 1956, writ ref'd n.r.e.).
204. City of San Antonio v. San Antonio Irrigation Co., 118 Tex. 154, 125 S.W.2d 546 (1929); Bowers v. City of Taylor, 16 S.W.2d 520 (Tex. Comm. App. 1929), reh. den. 24 S.W.2d 816 (Tex. 1930).
205. Art. 4413(32c) § 4(b).
206. Certain statutes authorize the issuance of bonds to purchase capacity in treatment system owned by another unit of government. See text accompanying notes 82-98 supra.
207. Art. 4413(32c) § 4(e).
208. Tex. Att'y Gen. Op. No. H-170 (1973).
209. Art. 1011m § 4(a).
210. Id. § 4(c).
211. Tex. Att'y Gen. Op. No. M-1278 (1972).
212. Art. 4413(32c) § 5(a).

- 213. Id. § 5(b).
- 214. Id. § 5(d).
- 215. Id. § 5(c).
- 216. See text accompanying notes 82-98 supra.
- 217. 33 U.S.C. § 1288(b)(3) (Supp. IV, 1974).
- 218. EPA, Guidelines for State and Areawide Water Quality Management Program Development 9-2 (1976).
- 219. Tex. Water Code § 21.088 (1972).
- 220. Id. § 21.088(c).
- 221. Id. § 25.101-.106.
- 222. Art. 1011m § 4(a).

III. STATE POLICIES ON AREAWIDE WATER QUALITY MANAGEMENT SYSTEMS

State-level involvement in the development of areawide water quality management systems stems from several sources. Although section 208 requires that management agency designations be submitted by the Governor of each state after consultation with the appropriate planning agency,¹ state law names the Texas Water Quality Board (TWQB) as the principal authority in the state on all matters relating to water quality.² On March 23, 1976, Governor Dolph Briscoe issued Executive Order D.B. 18-A, which directs the TWQB, acting with the advice and concurrence of the Governor's Special Advisor on Natural Resources,³ to provide recommendations for the designation of waste treatment management agencies within each planning area. The Order also authorizes the TWQB to promulgate state guidelines concerning the designation of management agencies and directs the Special Advisor on Natural Resources to review the guidelines prior to adoption by the TWQB.

TEXAS WATER QUALITY BOARD STAFF MEMORANDUM

The TWQB has not yet adopted formal state guidelines for the designation of management agencies, but the staff of the TWQB has issued a memorandum that discusses factors for consideration in the development of areawide water quality management systems.⁴ The memorandum suggests that the Governor should designate the TWQB as the management agency responsible for the following functions:

- (1) issuance of point source discharge permits;
- (2) enforcement of point source discharge permits;

- (3) maintenance of data concerning stream quality, effluent quality, existing permits, and costs of publicly owned treatment works;
- (4) monitoring of plan implementation, updating of plans, and refinement of plans;
- (5) monitoring of instream and effluent quality;
- (6) adoption of water quality standards; and
- (7) establishment of priorities for the award of federal grant funds for the construction of publicly owned waste treatment facilities.⁵

The memorandum favors the designation of local and regional "treatment works management agencies" with the following capabilities:

- (1) to operate and maintain treatment works;
- (2) to raise revenues, including the assessment of waste treatment charges;
- (3) to incur short- and long-term indebtedness;
- (4) to assure that each participating community pays its proportionate share of treatment costs;
- (5) to refuse to receive any wastes from any municipality or subdivision thereof which does not comply with any provisions of an approved plan applicable to such area; and
- (6) to accept for treatment industrial wastes.⁶

Each "treatment works management agency" would serve a specified geographic area within which no other agency could receive a construction grant or, absent the granting of a variance by the TWQB, a state discharge permit.⁷

The memorandum also indicates that the TWQB staff does not anticipate the designation of nonpoint source management agencies at the end of the initial two-year planning process because "[t]here are no areas in the state where it can be documented that a nonpoint source of pollution is a significant contributor to water quality problems."⁸ Instead, the update phase of the planning process, for which the TWQB expects to assume responsibility, should provide

for verification of the significance of specific nonpoint sources. Management agency designations for nonpoint source control programs should not occur until that verification is accomplished.⁹

ANALYSIS OF THE TWQB STAFF MEMORANDUM

PROPOSED TWQB FUNCTIONS

Issuance of Point Source Discharge Permits. The TWQB possesses sole authority under state law to issue discharge permits,¹⁰ with a single exception. The Texas Railroad Commission has the power to issue permits for the discharge of waste resulting from activities associated with the production of oil and gas.¹¹ Thus the designation of the TWQB (in conjunction with the Railroad Commission) as the management agency responsible for permitting point sources would conform to state law.

Enforcement of Point Source Discharge Permits. The Texas Water Quality Act empowers the TWQB to enforce discharge permits,¹² but also authorizes each local government in the state to initiate enforcement proceedings for violations occurring within its jurisdiction.¹³ In addition, each city having a population of greater than 5,000 must establish a pollution control program that includes, in cooperation with the TWQB, a procedure for obtaining permit compliance.¹⁴ Presumably the designation of the TWQB as the management agency responsible for permit enforcement would not preclude enforcement activities by local governments.

Maintenance of a Data Base and Monitoring of Instream and Effluent Quality. The TWQB shares authority for maintaining water quality data and monitoring water quality with local governments and other state agencies.¹⁵ State law directs the Texas Water Development Board to investigate matters concerning groundwater quality¹⁶ and authorizes local governments to inspect public water

to determine whether it meets state standards and whether dischargers have and comply with discharge permits.¹⁷ Furthermore, municipal water pollution control programs must include an inventory and monitoring of all significant waste discharges.¹⁸ Although section 208 does not require the designation of an agency to perform these functions, they probably constitute elements of the plan update and revision process.

Monitoring of Plan Implementation, Updating of Plans, and Refining of Plans. State law makes the TWQB the principal authority on water quality matters in Texas,¹⁹ and authorizes the TWQB to utilize water quality management plans in reviewing and making determinations on applications for permits and construction grants.²⁰ Thus state policy provides support for the designation of the TWQB to monitor the status of plan implementation.

The memorandum's suggestion that the TWQB should have responsibility for updating and refining areawide plans raises questions of interpretation. Although nothing in section 208 or the EPA's regulations expressly prohibits the designation of a state agency for the plan update function, several provisions seem to anticipate that regional planning agencies selected to prepare the initial plan will also have continuing planning responsibilities. Section 208(b)(1) requires designated regional planning agencies to establish "a continuing areawide waste treatment management planning process,"²¹ and section 208(f)(1) authorizes federal grants to designated regional planning agencies to support such a process.²² Similarly, the regulations speak of water quality management decisions to be made "on an areawide or local basis" prior to incorporation into the state program.²³ The only provision that deals with the withdrawal of planning responsibilities from a regional agency requires the state to achieve the requirements of section 208 where a designated regional planning agency fails to do so.²⁴ Therefore, the designation

of the TWQB to update and refine an areawide plan prepared by a regional planning agency must be a deliberate decision by the regional planning agency. While the decision would find little support in the law, it would not contravene any express requirement.

Adoption of Water Quality Standards. The TWQB has sole and exclusive authority under state law to establish and revise water quality standards.²⁵ In addition, section 303(c) authorizes state water pollution control agencies to revise standards at least once every three years.²⁶ Thus the designation of the TWQB for this purpose would conform to federal and state law.

Establishment of Construction Priorities. Sections 204(a)(3) and 303(e) authorize state agencies to establish priorities for the award of federal grants for the construction of waste treatment facilities.²⁷ Section 208(b)(2)(B), however, requires each areawide plan to establish construction priorities for municipal and industrial needs over a twenty year period.²⁸ Presumably area-wide plans will set priorities within designated planning areas, but the state will formulate overall statewide priorities. The designation of the TWQB to establish construction priorities comports with applicable law, provided that the TWQB's process incorporates rankings included in areawide plans.

PROPOSED LOCAL AND REGIONAL FUNCTIONS

The TWQB staff memorandum proposes the designation of local and regional treatment works management agencies to finance, construct, and operate waste treatment systems. It then restates six of the requirements contained in section 208(c)(2), which Chapter I of this report analyzes in detail. The memorandum omits section 208(c)(2)'s requirement that the management system have authority to accept and utilize grant funds,²⁹ an omission that probably

resulted from oversight rather than intention.

The memorandum also indicates that only designated treatment works management agencies would be eligible to receive construction grants or, unless the TWQB grants a variance, a discharge permit. Section 208(d) prohibits the making of any construction grants within a planning region except to a designated management agency for treatment works in conformance with the plan.³⁰ Section 208(e) prohibits the issuance of any NPDES permits that conflict with an approved areawide plan, but does not limit the issuance of permits to designated management agencies.³¹ Accordingly, the TWQB's proposals satisfy the requirements of section 208.

REGULATORY FUNCTIONS

With the exception of its references to stream standards and the issuance and enforcement of point source discharge permits, the TWQB staff memorandum does not provide for the designation of agencies to implement the regulatory programs that section 208 requires. The memorandum states that nonpoint source management agencies will not be designated because of an absence of documentation that nonpoint sources contribute to water quality, and makes no mention of regulating the location of discharge related facilities or controlling industrial pretreatment.

A failure to designate agencies to implement regulatory programs would violate section 208. Section 208(b)(2)(C) provides that each plan must contain certain regulatory measures³² and section 208(c)(2)(A) requires the designation of management agencies with adequate authority to carry out appropriate plan elements.³³ Furthermore, section 208(b)(2)(F)-(K) requires each plan to include processes to control, to the extent feasible, certain types of pollution sources.³⁴ EPA regulations also specify that areawide plans

must contain a regulatory program and that the Governor must designate agencies to implement the program.³⁵ Although the initial phase of the planning process may produce only relatively limited regulatory measures, these provisions indicate that the management system must include agencies having some degree of regulatory authority.

FOOTNOTES - CHAPTER III

1. 33 U.S.C. § 1288(c)(1) (Supp. IV, 1974).
2. Tex. Water Code § 21.257 (1972).
3. The Executive Order names James M. Rose as The Governor's Special Advisor on Natural Resources.
4. Memorandum: Considerations in the Establishment of a 208 Management System for Texas (Feb. 15, 1977).
5. Id. at 7-9
6. Id. at 10-11.
7. Id. at 11.
8. Id. at 6-7
9. Id. at 7
10. Tex. Water Code § 21.079 (Supp. 1976-77)
11. Id. § 21.261.
12. Id. § 21.253
13. Id. § 21.254.
14. Id. § 21.357(b)(4)
15. Id. § 21.261.
16. Id. § 21.258.
17. Id. § 21.351.
18. Id. § 21.357(b)(1)-(3).
19. Id. § 21.258.
20. Id. § 21.089(e).
21. 33 U.S.C. § 1288(b)(1) (Supp. IV, 1974).
22. Id. § 1288(f)(1)
23. 40 C.F.R. § 130.1(d)(2) (1976).

24. Id. § 130.33(a).
25. Tex. Water Code § 21.075 (1972).
26. 33 U.S.C. § 1313(c).
27. Id. §§ 1284(a)(3), 1313(e).
28. Id. § 1288(b)(2)(B).
29. Id. § 1288(c)(2)(D).
30. Id. § 1288(d).
31. Id. § 1288(e).
32. Id. § 1288(b)(2)(C).
33. Id. § 1288(c)(2).
34. Id. § 1288(b)(2)(F)-(K).
35. 40 C.F.R. §§ 130.15(d), 131.11(o)(2)(1976)

IV. THE NORTH CENTRAL TEXAS AREAWIDE WATER QUALITY MANAGEMENT PROGRAM

WASTE TREATMENT AND FINANCIAL PROGRAMS

Twenty-six of the planning area's 66 publicly owned waste treatment plants have authorized flows of 0.5 MGD or greater and account for approximately 97 percent of the total reported daily flow and about 90 percent of the total BOD and TSS loadings contributed to the area's water courses. The areawide plan calls for the abandonment of five of the 26 plants in the near future and the diversion of those flows into subregional systems.* Fourteen governmental entities operate the remaining 21 plants and may be classified as follows:

<u>Subregional Operators</u>		<u>Individual Operators</u>	
Dallas			
Central Plant	150.0 MGD	Colony M.U.D. #1	1.0 MGD
Southside Plant	10.0 MGD	Flower Mound M.U.D. #1	0.7 MGD
Denton	6.0 MGD	Grapevine	1.5 MGD
Fort Worth		Lewisville	6.0 MGD
Village Creek Plant	96.0 MGD	McKinney	2.0 MGD
Garland		Midlothian	0.9 MGD
Duck Creek Plant	30.0 MGD	Richardson	2.2 MGD
Rowlett Creek Plant	6.0 MGD	Seagoville	1.2 MGD
NTMWD			
Mesquite PLANT	5.5 MGD		
Plano Plant	6.0 MGD		
Rockwall Plant	0.6 MGD		
Wylie Plant	0.8 MGD		
TRA			
Central Plant	100.0 MGD		
10 Mile Creek Plant	6.8 MGD		

This section of the report describes the waste treatment and financial activities of the six subregional operators and the eight individual operators.

*The plants scheduled for abandonment are the Balch Springs (1979), Fort Worth International Airport (1977), Haltom City (1979), Fort Worth River-side (1978) and Kleberg facilities (1979).

SUBREGIONAL OPERATORSDallasGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356

Administrative Officers: George Schrader, City Manager
Marsh Rice, Director, Dallas Water Utilities

Waste Treatment Information

Treatment Works: 150.0 MGD Central Plant
10.0 MGD Southside Plant

Other Jurisdictions Served: Addison, Cockrell Hill, Highland Park,
Richardson (portion), University Park, Wilmer

Industrial Flow: 15% of total (Central Plant)
1% of total (Southside Plant)

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$2.15/mo. plus 38¢/mo. residential usage charge
or 41¢/mo. general usage charge

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees
Industrial surcharges

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds
Waste treatment fees
Sewer connection fees
Industrial cost recovery (anticipated)

Outstanding

Indebtedness (7-31-76): \$147,193,000 (rev. bonds for water & sewer)

Revenue Bond

- Indenture Provisions:**
- (1) first lien on water & sewer revenues
 - (2) creation of Reserve Fund and Interest and Sinking Fund with required balances
 - (3) coverage of 1.5 times maximum annual requirements to issue additional bonds

Denton**General Information**

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356

Administrative Officers: James White, City Manager
E. E. Jones, Water & Sewer Superintendent

Waste Treatment Information

Treatment Works: 6.0 MGD plant

Other Jurisdictions Served: Corinth

Industrial Flow: 10% of total

Adopted Sewer Use Ordinance: Yes (presently undergoing revision)

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$1.70/mo. plus 27¢/1,000 gal. water over
2,000 gal. (residential)
\$3.30/mo. plus 27¢/1,000 gal. water over
2,000 gal. and 18¢/1,000 gal. over
50,000 gal. (commercial)

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds

Outstanding

Indebtedness (5-31-76): \$6,710,000 (rev. bonds for water & sewer)

Revenue Bond

- Indenture Provisions:
- (1) first lien on water & sewer revenues
 - (2) creation of Reserve Fund and Interest and Sinking Fund with required balances
 - (3) coverage of 1.3 times maximum annual requirements to issue additional bonds

Fort WorthGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356

Administrative Officers: R. N. Line, City Manager
J. Les Robinson, Water Department Director

Waste Treatment Information

Treatment Works: 96.0 MGD Village Creek Plant

Other Jurisdictions Served: Arlington, Benbrook, Burleson, Crowley, Edgecliff, Everman, Forest Hill, Haltom City, Hurst, Lake Worth, N. Richland Hills, Pantego, Richland Hills, River Oaks, Saginaw, Sansom Park, Westworth, White Settlement

Industrial Flow: 20% of total (Riverside and Village Creek Plants)

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$1.85/mo. plus 24.7¢/100 cu. ft. of water or of metered sewage flow for commercial users

Methods of Financing

Operation and Maintenance: Waste treatment fees
Industrial surcharges

Methods of

Financing Construction: Revenue bonds
Tax bonds
EPA construction grant funds
Waste treatment fees
Sewer connection fees
Industrial cost recovery (anticipated)

Outstanding

Indebtedness (9-30-76): \$32,280,000 (rev. bonds for water & sewer)
 \$32,410,000 (tax bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
 (2) surplus revenues pledged to pay off tax bonds issued to construct sewers
 (3) creation of Reserve Fund, Operating Reserve Account, and Interest and Sinking Fund with required balances
 (4) coverage of 1.5 times maximum annual requirements to issue additional bonds

GARLANDGeneral Information

Type of Jurisdiction: Home rule city

Statutory authority: Arts. 823, 1028, 1107-11, 1175
 Water Code § 21.356

Administrative Officers: C. E. Duckworth, City Manager
 Fred Greene, Public Works Administrator

Waste Treatment Information

Treatment Works: 30.0 MGD Duck Creek Plant
 6.0 MGD Rowlett Creek Plant

Other Jurisdictions Served: Dallas (portion), Mesquite (portion),
 Richardson (portion), Rowlett (portion), Sachse

Industrial Flow: 10% of total (Duck Creek Plant)
 4% of total (Rowlett Creek Plant)

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$4/mo. plus 55¢/1,000 gal. of water over 6,400
 gal. up to \$9.75/mo. maximum (residential)
 \$4/mo. plus 66¢/1,000 gal. of water over 6,400
 gal. (commercial)

Methods of financing

Operation and Maintenance: Waste treatment fees
 Sewer connection fees
 Industrial surcharges

Methods of

Financing Construction: Revenue bonds
 Tax bonds
 Combination tax and revenue bonds
 EPA construction grant funds
 Waste treatment fees
 Industrial cost recovery (anticipated)

Outstanding

Indebtedness (9-30-75): \$75,330,000 (rev. bonds for water, sewer & electric)
 \$1,761,612 (tax bonds for water & sewer)
 \$5,834,000 (comb. bonds for sewer only)

Bond

Indenture Provisions: (1) rev. bonds have first lien on system revenues
 (2) comb. bonds have second lien on system revenues
 (3) surplus revenues pledged to pay off tax bonds
 (4) creation of Reserve Fund and Interest and Sinking Fund with required balances
 (5) coverage of 1.75 times average annual requirements to issue additional bonds

North Texas Municipal Water DistrictGeneral Information

Type of Jurisdiction: Special district

Statutory Authority: Art. 8280-141; Water Code ch. 25

Administrative Officers: Carl W. Riehn, Executive Director

Waste Treatment Information

Treatment Works: 5.5 MGD Mesquite Plant
 6.0 MGD Plano Plant
 0.6 MGD Rockwall Plant
 0.8 MGD Wylie Plant

Other Jurisdictions Served: NTMWD does not provide retail treatment service. It owns and operates the Mesquite and Plano Plants as parts of the Trinity East Fork Regional Wastewater System and operates major plants owned by Rockwall and Wylie as well as other smaller plants.

Industrial Flow: 2% of total (Mesquite Plant)
 1% of total (Plano Plant)
 1% of total (Rockwall Plant)
 1% of total (Wylie Plant)

Adopted Sewer Use Ordinance: No, but operating agreements require customer cities to impose necessary regulations.

Adopted Sewer Extension Policy: No, but NTMWD has a formal policy on the provision of advisory service, operational service, financial assistance, and regional waste water services to cities and special districts in the East Fork area.

Financial Information

Wholesale Treatment Fees: As specified in operating agreements.

Methods of Financing

Operation and Maintenance: Contract revenues

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds

Outstanding

Indebtedness (5-31-76): \$2,750,000 (rev. bonds for regional system)

Revenue Bond

Indenture Provisions: (1) first lien on revenue from contracts with Mesquite and Plano
(2) creation of Revenue Fund, Reserve Fund, and Interest and Sinking Fund with required balances
(3) NTMWD has the right to issue additional bonds at any time

Trinity River AuthorityGeneral Information

Type of Jurisdiction: River authority

Statutory Authority: Arts. 11091, 8280-188
Water Code ch. 25

Administrative Officers: David H. Brune, General Manager
James L. Strawn, Manager Northern Division

Waste Treatment Information

Treatment Works: 100.0 MGD Central Plant
6.8 MGD 10 Mile Creek Plant

Other Jurisdictions Served: TRA does not provide retail treatment service. It provides treatment service at the Central plant to Arlington, Bedford, Carrollton, Coppell, Colleyville, Dallas, Dallas-Ft. Worth Regional Airport, Euless, Farmers Branch (incl. Addison), Fort Worth, Grand Prairie, Grapevine, Hurst, Irving, Mansfield and North Richland Hills. TRA provides service at the 10 Mile Creek Plant to Cedar Hill, DeSoto, Duncanville, Ferris, and Lancaster.

Industrial Flow: 15% of total (Central Plant)
1% of total (10 Mile Creek Plant)

Adopted Sewer Use Ordinance: No, but operating agreements require customer cities to impose necessary regulations.

Financial Information

Wholesale Treatment Fees: As specified in operating agreements.

Methods of Financing

Operation and Maintenance: Contract revenues

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds

Outstanding

Indebtedness (5-31-76): \$60,855,000 (rev. bonds for regional system)

Revenue Bond

Indenture Provisions: (1) first lien on revenue from contracts with customer cities
(2) creation of Revenue, Reserve, Emergency, Research & Development, and Interest & Sinking Funds with required balances
(3) coverage of 1.0 times average annual requirements to issue additional bonds

INDIVIDUAL OPERATORS

Colony Municipal Utility District #1

General Information

Type of Jurisdiction: Municipal utility district

Statutory Authority: Water Code chs. 25 and 54

Administrative Officers: Rick Chadwick, District Manager

Waste Treatment Information

Treatment Works: 1.0 MGD plant

Industrial Flow: None

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: No

Requirement for Sewer Connection Permits: No

Financial Information

Retail Treatment Fees: \$5/mo. (residential)
\$25/mo. (commercial)

Methods of Financing

Operation and Maintenance: Waste treatment fees
Water fees
Maintenance tax

Methods of

Financing Construction: Combination tax and revenue bonds

Outstanding

Indebtedness (1-31-76): \$7,175,000 (comb. bonds for water & sewer)

Combination Bond

Indenture Provisions: When surplus water and sewer revenues have accumulated to an amount equal to the succeeding year's debt service, the District may reduce its tax levy to produce 25% of the debt service. When net revenues meet debt service requirements for three consecutive years, the District may abate its tax levy until and unless a levy becomes necessary to avoid default.

Flower Mound Municipal Utility District #1General Information

Type of Jurisdiction: Municipal utility district

Statutory Authority: Water Code chs. 25 and 54

Administrative Officers: Janice Zackowski, Office Manager
Frank Kirk, Plant Superintendent

Waste Treatment Information

Treatment Works: 0.7 MGD Plant

Industrial Flow: None

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Financial Information

Retail Treatment Fees: \$5/mo. (residential)
 \$25/mo. plus \$1 per fixture over 1 (commercial)

Methods of Financing

Operation and Maintenance: Waste treatment fees
 Sewer connection fees
 Water fees
 Maintenance tax

Methods of

Financing Construction: Combination tax and revenue bonds
 EPA construction grant funds
 Waste treatment fees
 Ad valorem tax

Outstanding

Indebtedness (12-31-74): \$3,990,000 (comb. bonds for water & sewer)

GrapevineGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
 Water Code § 21.356

Administrative Officers: Floy T. Ezell, City Manager
 James L. Hancock, Asst. City Manager

Waste Treatment Information

Treatment Works: 1.5 MGD Plant

Industrial Flow: 5% of total

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information:

Retail Treatment Fees: \$2.50/mo. plus 20¢/1,000 gal. of water
 over 3,000 gal. (residential)

\$3.50/mo. plus 20¢/1,000 gal. of water
 over 3,000 gal., 10¢/1,000 gal. over 15,000 gal.,
 and 5¢/1,000 gal. over 30,000 gal. (commercial)

Methods of Financing

Operation and Maintenance: Waste treatment fees
 Sewer connection fees
 Industrial surcharges
 Water fees and connection fees
 Ad valorem tax

Methods of

Financing Construction: Revenue bonds
 Tax bonds
 EPA construction grant funds
 Ad valorem tax

Outstanding

Indebtedness (6-30-76): \$1,405,000 (rev. bonds for water & sewer)
 \$690,125 (tax bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
 (2) creation of Reserve Fund and Interest and
 Sinking Fund with required balances
 (3) coverage of 1.5 times average annual
 requirements to issue additional bonds

LewisvilleGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
 Water Code 21.356

Administrative Officers: Johnny Sartain, City Manager
 James Knight, Public Works Director

Waste Treatment Information

Treatment Works: 6.0 MGD Plant

Industrial Flow: None

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail treatment fees: \$2.30/mo. plus 30¢/1,000 gal. of water over
2,000 gal, 15¢/1,000 gal. over 10,000 gal.,
and 10¢/1,000 gal. over 100,000 gal.

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees

Methods of

Financing Construction: Revenue bonds
Tax bonds
EPA construction grant funds
Waste treatment fees
Sewer connection fees

Outstanding

Indebtedness (8-31-76): \$3,811,000 (rev. bonds for water & sewer)
\$5,000 (tax bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
(2) creation of Reserve Fund and Interest and
Sinking Fund with required balances
(3) coverage of 1.5 times average annual
requirements to issue additional bonds

McKinneyGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356

Administrative Officers: Lee Vickers, City Manager

Waste Treatment Information

Treatment Works: 2.0 MGD Plant

Industrial Flow: 3% of total

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Ordinance: Yes

Requirement for Sewer Connection Permits: Yes

Review of developments for Adequate Sewer and Treatment Capacity: No

Financial Information

Retail treatment fees: \$1.35/mo. plus 13.5¢/1,000 gal. of water
over 1,000 gal. up to \$2.70/mo. maximum

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees
Industrial surcharges

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds
Industrial cost recovery (anticipated)

Outstanding

Indebtedness (9-30-76): \$1,615,000 (rev. bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
(2) creation of Reserve Fund and Interest and
Sinking Fund with required balances
(3) coverage of 1.5 times average annual
requirements to issue additional bonds

MidlothianGeneral Information

Type of Jurisdiction: General law city

Statutory Authority: Arts. 701, 823, 1015, 1026, 1107-11
Water Code § 21.356

Administrative Officers: R. L. Rudd, City Administrator
Robert Garner, Public Works Director

Waste Treatment Information

Treatment Works: 0.9 MGD plant

Industrial Flow: None

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permit: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$5/mo. (residential)
\$2.85/mo. (commercial and churches)
\$6.85/mo. plus 17¢/1,000 gal. of water over
10,000 gal. (cafes, drug stores, service
stations, motels, washaterias, schools,
manufacturing establishments)

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees

Methods of

Financing Construction: Revenue bonds
EPA construction grant funds

Outstanding

Indebtedness (12-31-75): \$335,000 (rev. bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
(2) creation of Reserve, Emergency, and Interest
& Sinking Funds with required balances
(3) coverage of 1.5 times annual requirements
to issue additional bonds

RichardsonGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356.

Administrative Officers: Robert Hughey, City Manager
Marshall Haney, Utilities Director

Waste Treatment Information

Treatment Works: 2.2 MGD plant

Industrial Flow: 2% of total

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: Rate ordinance undergoing revision

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees
Industrial surcharges

Methods of

Financing Construction: Revenue bonds
Tax bonds
EPA construction grant funds
Waste treatment fees
Sewer connection fees

Outstanding

Indebtedness (9-30-75): \$7,674,000 (rev. bonds for water & sewer)
\$1,041,000 (tax bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) first lien on water & sewer revenues
(2) surplus revenues pledged to pay off tax bonds
(3) creation of Reserve Fund and Interest and Sinking Fund with require balances
(4) coverage of 1.5 times average annual requirements to issue additional bonds

SeagovilleGeneral Information

Type of Jurisdiction: Home rule city

Statutory Authority: Arts. 823, 1028, 1107-11, 1175
Water Code § 21.356

Administrative Officers: David G. Couch, City Manager

Waste Treatment Information

Treatment Works: 1.2 MGD plant

Industrial Flow: 10% of total

Adopted Sewer Use Ordinance: Yes

Adopted Sewer Extension Policy: Yes (presently undergoing revision)

Requirement for Sewer Connection Permits: Yes

Review of Developments for Adequate Sewer and Treatment Capacity: Yes

Financial Information

Retail Treatment Fees: \$4.50/mo. (residential)
\$7.25/mo. (commercial)

Methods of Financing

Operation and Maintenance: Waste treatment fees
Sewer connection fees
Water fees

Methods of

Financing Construction: Revenue bonds
Tax bonds

Outstanding

Indebtedness (9-30-76): \$980,000 (rev. bonds for water & sewer)
\$110,000 (junior lien rev. bonds)
\$164,000 (tax bonds for water & sewer)

Revenue Bond

Indenture Provisions: (1) rev. bonds have first lien on water & sewer revenues
(2) jr. lien bonds have second lien on water & sewer revenues
(3) surplus revenues used to pay off tax bonds
(4) creation of Reserve Fund and Interest and Sinking Fund with required balances
(5) coverage of 1.5 times average annual requirements to issue additional bonds

REGULATORY PROGRAMS

This section of the report presents an inventory of local, regional, state, and federal agencies that have authority to engage in water quality related regulatory activities within the planning area. Some of the regulatory efforts listed, such as the issuance of discharge permits and the control of septic tanks, have water quality enhancement as a primary objective. Other measures, such as subdivision regulations and building codes, aim primarily at goals other than water quality but could be modified to incorporate provisions that would reduce or prevent water pollution. The regulatory activities cited in this chapter provide a basis upon which to build the regulatory program required by section 208.

MUNICIPALITIES

Texas cities have several types of water quality related regulatory authority:

<u>Type of Regulation</u>	<u>Statutory Authority</u>
Municipal water pollution control program	Water Code § 21.357
Pretreatment regulations	Water Code § 21.356
Discharge permit enforcement	Water Code § 21.254
Septic tank control	Water Code § 21.357
Zoning	Arts. 1011a, 1011c, 1175(26)
Floodplain zoning	Art. 8280-13
Subdivision regulations	Art. 974a
Building codes	Arts. 1015, 1175
Solid waste control	Arts. 1015, 1175

The table on the following page lists all cities within the North Central Texas 208 planning area.

Municipalities in the North Central Texas 208 Planning Area

<u>Collin County</u>	<u>Dallas County</u>	<u>Ellis County</u>	<u>Tarrant County</u>
Addison	Addison	Ferris	*Arlington
Allen	*Balch Springs	Midlothian	*Bedford
Branch	Buckingham	Ovilla	*Benbrook
*Dallas	*Carrollton	Palmer	Blue Mound
Fairview	*Cedar Hill	Red Oak	Briar
Frisco	Cockrell Hill		*Burleson
*Garland	Combine	<u>Johnson County</u>	*Colleyville
Lavon	Coppell	Briar Oaks	Crowley
Lucas	*Dallas	*Burleson	Dalworthington Gardens
*McKinney	*DeSoto		Edgecliff
Murphy	*Duncanville	<u>Kaufman County</u>	*Euless
Parker	*Farmers Branch	Combine	*Everman
*Plano	Ferris	Crandall	*Forest Hill
Princeton	*Garland	*Dallas	*Fort Worth
Prosper	Glenn Heights	Forney	*Grand Prairie
Renner	*Grand Prairie	Heath	*Grapevine
*Richardson	*Highland Park	*Seagoville	*Haltom City
Sachse	Hutchins		Haslet
Saint Paul	*Irving	<u>Rockwall County</u>	*Hurst
Wylie	*Kleberg	*Dallas	Keller
	*Lancaster	*Garland	Kennedale
<u>Denton County</u>	*Mesquite	Heath	Lakeside
Argyle	Ovilla	Rockwall	Lake Worth
Aubrey	*Richardson	Rowlett	*Mansfield
*Carrollton	Rowlett		*N. Richland Hills
Coppell	Sachse		Pantego
Copper Canyon	*Seagoville		*Richland Hills
Corinth	Sunnyvale		*River Oaks
Cross Roads	*University Park		Saginaw
*Denton	Wilmer		Sansom Park
Double Oak			Southlake
Flower Mound			*Watauga
Hebron			Westlake
Hickory Creek			Westover Hills
Highland Village			Westworth Village
Justin			*White Settlement
Krugerville			
Lake Dallas			
*Lewisville			
Lincoln Park			
Little Elm			
Renner			
Roanoke			
Shady Shores			
Southlake			
Westlake			

*Cities having a population of 5,000 or greater.

COUNTIES

Texas counties have the power to undertake the following types of water quality related regulatory activities:

<u>Type of Regulation</u>	<u>Statutory Authority</u>
Enforcement of permits	Water Code § 21.254
Septic tank regulations	Water Code § 21.084
Floodplain zoning	Art. 8280-13
Subdivision regulations	Arts. 2372k, 6626a
Solid waste control	Art. 4477-8.

The North Central Texas 208 planning area includes all of Dallas County, most of Tarrant County, and portions of Collin, Denton, Ellis, Johnson, Kaufman, and Rockwall Counties.

SPECIAL DISTRICTS

All Conservation Amendment districts that own or operate waste treatment systems have authority to adopt and enforce pretreatment regulations. As noted previously in this chapter, four districts operate major waste treatment plants in the planning area: Colony M.U.D. #1, Flower Mount M.U.D. #1, North Texas Municipal Water District, and the Trinity River Authority.

The TWQB may authorize any Conservation Amendment district that owns or operates a dam or reservoir to license and regulate private sewage facilities within its jurisdiction. At present, the North Texas Municipal Water District regulates septic tanks in the drainage areas of Lake Ray Hubbard and Lavon Reservoir.

Soil and water conservation districts may engage in soil conservation practices and, with the approval of nine tenths of the voting landowners, may adopt land use regulations. The following soil and water conservation

districts operate within the planning area: Collin County S.W.C.D. (#535), Dalworth S.W.C.D. (#519), Denton-Wise S.W.C.D. (#528), Ellis-Prairie S.W.C.D. (#504), Kaufman-Van Zandt S.W.C.D. (#505).

STATE AGENCIES

A number of state agencies have water quality related regulatory powers:

<u>Agency</u>	<u>Statutory Authority</u>	<u>Type of Regulatory Activity</u>
Agriculture Department	Arts. 135b-4, 135b-5a	Control of herbicides, pesticides, and fertilizers
Health Resources Department	Water Code § 21.260; Arts. 4477-1, 4477-7	Investigation of health related aspects of water quality; abatement of nuisances; control of municipal solid waste
Parks & Wildlife Department	Water Code § 21.259; Parks & Wildlife Code § 86.001-.009	Enforcement of permit violations affecting aquatic life and wildlife; issuance of dredging permits
Railroad Commission	Water Code § 21.261, ch. 22, Art. 5920-10	Control of wastes from oil and gas production; control of pollution in connection with surface mining
Soil and Water Conservation Board	Art. 165a-4	Supervision of state soil and water conservation districts
Water Development Board	Water Code § 21.258	Investigation of groundwater quality
Water Quality Board	Water Code ch. 21; Art. 4477-7	Establishment of stream standards; issuance and enforcement of discharge permits; control of septic tanks; control of industrial solid waste
Water Well Drillers Board	Art. 7621e; Water Code § 21.265	Regulation of pollution in connection with water well drilling

FEDERAL AGENCIES

Although numerous federal agencies operate programs in the general field of environmental protection and natural resource management, only a few have direct regulatory authority related to water quality. The U.S. Army Corps of

Engineers issues permits for the discharge of dredged or fill material into navigable waters. The U.S. Soil Conservation Service within the Department of the Interior has authority to carry out measures to abate and prevent soil erosion and agricultural pollution. Finally, the U.S. Environmental Protection Agency reviews state water quality standards, administers the NPDES discharge permit program, and issues permits for the disposal of sewage sludge.

GENERAL WATER QUALITY MANAGEMENT PROGRAMS

This section of the report focuses on intergovernmental arrangements for water quality management in North Central Texas. It begins with a review of the recommendations of the Management and Finance Program, Volume 3 of the 1970 Upper Trinity River Basin Comprehensive Sewerage Plan (UTRBCSP). Those proposals provide a useful framework for discussion of current intergovernmental water quality management activities, including the NCTCOG Water Quality Council, the 208 Areawide Planning Advisory Committee, the Upper Trinity River Basin Water Quality Compact, the designation of regional waste treatment systems by the TWQB, and the utilization of the intergovernmental contract for water pollution control purposes.

UTRBCSP MANAGEMENT AND FINANCE PROGRAM

Background: The Sewerage Plan. The North Central Texas Council of Governments (NCTCOG) completed and approved the Upper Trinity River Basin Comprehensive Sewerage Plan (UTRBCSP) in 1970. The plan, which dealt with an area encompassing 21 counties and 11,000 square miles, recommended the following actions:

- (1) expansion of six major treatment plants operated by four entities (Dallas, Fort Worth, Garland, and the Trinity River Authority) to serve as regional plants for the highly urbanized metropolitan area;

- (2) construction of a series of interceptor sewers to connect customer cities to the regional plants and gradual phasing out of approximately 47 smaller, less efficient plants; and
- (3) continued use of individual treatment plants for outlying communities in the remainder of the upper Trinity River basin.

In 1973 NCTCOG amended the plan to provide for a multiplant system on the East Fork of the Trinity, rather than a single regional facility at Garland. This amendment reduced the number of plants scheduled for phasing out from 47 to 38.

The 1977 Annual Water Quality Management Plan for North Central Texas (Volume I: Waste Treatment Management Program) concludes that nearly all of the recommendations of the amended UTRBCSP either have been implemented, are under construction, or are in the active planning stage. Dallas has almost completed expansions of its Central and Southside Plants. Fort Worth expects to complete a major enlargement of its Village Creek Plant by 1978, at which time the city will abandon its Riverside Plant. The Trinity River Authority has received grant funds from EPA for a major expansion of its Central Plant and has almost completed Step I facilities planning for its Ten Mile Creek Plant. Furthermore, much of the recommended interceptor construction has been completed on or ahead of schedule. As a consequence, the TRA Central Plant now serves approximately 450,000 people in 14 cities and the Fort Worth plants serve about 609,400 people in 20 cities. The Dallas Central and Southside Plants provide service to more than 916,000 people in four communities, and the TRA Ten Mile Creek facility serves about 56,250 people in five cities. In a few cases, cities for which the UTRBCSP recommended an independent treatment plant have tied into the regional system because of the early availability of interceptor lines. In accordance with the 1973 East Fork amendments, Garland, McKinney, and Seagoville operate

their own plants while the North Texas Municipal Water District owns and operates plants at Mesquite and Plano and operates plants owned by Rockwall and Wylie. The Garland facility serves portions of several jurisdictions.

The Management and Financial Program. The UTRBCSP advocated a four-level management program to implement the regional sewerage plan. According to the recommended program, the federal/state, regional, joint system, and local levels would each have specific water quality management responsibilities. At the first level, federal and state agencies would have responsibility for furnishing water quality standards and other information, providing technical assistance, and enforcing standards.

With respect to the second level, the plan favored the formation of a regional Water Development Council within NCTCOG to provide overall policy guidance and to perform the following specific duties:

- (1) approval of the design and scope of the regional plan;
- (2) review of techniques and methodology utilized in regional plan development;
- (3) review and approval of periodic revisions to the regional plan;
- (4) approval of plant and interceptor performance standards;
- (5) review of wholesale rates upon request;
- (6) review of acquisitions and costs of absorbed plants;
- (7) drafting of joint rules and regulations for the regional system;
- (8) review and comment on proposed state and federal legislation;
- (9) carry out comprehensive water quality planning;
- (10) advise the TWQB on permit issuance;
- (11) review of water quality reports furnished by regional plant operators and assist in obtaining compliance with standards;
and

- (12) perform 204 (now A-95) review of all federal grant-in-aid applications for projects affecting water quality.

The UTRBCSP favored a 21-member Water Development Council with the membership distributed as follows:

- (1) six members from Dallas, including three operator representatives and three customer city representatives;
- (2) four members from Fort Worth, including two operator representatives and two customer city representatives;
- (3) four members from the Trinity River Authority system, including two operator representatives and two customer city representatives;
- (4) three members from the East Fork system, including one operator representative and two customer city representatives; and
- (5) four members from the region-at-large.

The NCTCOG Executive Board would approve all nominations for membership on the Water Development Council and would select the chairman.

Third, the recommended joint system level would consist of the operators of regional treatment systems. Each operator would have the following responsibilities:

- (1) planning, subject to regional review, of plant and interceptor requirements;
- (2) design, construction, operation, and maintenance of plants and interceptors;
- (3) establishment of operating rules and regulations based on regional guidelines;
- (4) issuance of bonds for construction of plants and interceptors;
- (5) negotiation of acquisition of obsolete or unneeded plants;
- (6) establishment of wholesale rates;
- (7) billing and collection of wholesale charges;
- (8) monitoring of stream quality and effluent from customer cities and industries;
- (9) assessment and collection of taxes and/or user charges for capital improvements;

- (10) review and approval of design and construction standards for local collection systems discharging into regional treatment systems;
- (11) inspection of construction of local collection systems discharging into regional treatment systems;
- (12) maintenance of joint system financial records; and
- (13) preparation of periodic financial status reports for customer cities.

In addition, each operator would cooperate in the formations of a council of customer cities and would take under advisement customer council recommendations.

Customer cities would comprise the fourth level of the management program.

Each city would have the following duties:

- (1) voluntary participation in customer councils;
- (2) design, construction, and maintenance of local collection systems;
- (3) issuance of bonds for construction of collection systems;
- (4) establishment of retail rates for sewer service;
- (5) billing and collection of retail charges;
- (6) adoption and enforcement of standards for construction of collection systems; and
- (7) issuance of sewer connection permits.

Cities that provide both wholesale and retail treatment service would function at both the joint system and local levels.

The UTRBCSP's recommended treatment and collection systems carried a price tag of \$269 million for construction by 1975, \$79 million for construction through the year 1989, and another \$229 million for construction through 2020. The plan called for the use of federal grants-in-aid, state assistance, and revenue bonds issued by the joint system operators to finance the costs of construction. The financial program also provided guidelines concerning

preinvestment in treatment works to be used by future customers and acquisition of facilities scheduled for phasing out.

The UTRBCSP suggested the drafting of a North Central Texas Regional Water Quality Compact, to which each operator and customer city would agree, that would formalize the operating relationships among participating governmental jurisdictions. The plan recommended that the Compact:

- (1) establish geographic service areas for each joint system operator;
- (2) provide that cities designated for joint system consolidation not expend funds on present facilities beyond recommended levels;
- (3) provide that cities designated to operate joint systems make treatment service available to customer cities at a level that meets applicable state/federal standards;
- (4) provide for appeal to the TWQB to enforce provisions of the UTRBCSP;
- (5) provide for adoption of regional construction standards for local collection systems and the enforcement of the standards through surcharges;
- (6) stipulate the amount of preinvestment of capital funds required of each joint system operator to assure capacity for additional cities;
- (7) specify the duties and responsibilities of operators, customer cities, and the Water Development Council; and
- (8) provide for the formation and operation of customer councils.

In sum, the Compact, as envisioned, would embody the entire Management and Financial Program in the form of binding multiparty contract.

CURRENT INTERGOVERNMENTAL WATER QUALITY MANAGEMENT ACTIVITIES

NCTCOG Water Quality Council. The NCTCOG Water Quality Council has the structure, but not all of the powers, of the UTRBCSP's recommended

Water Development Council. It consists of 21 members apportioned as specified in the UTRBCSP Management and Financial Program. Although the Council has not adopted formal bylaws or operating procedures, it carries out the following general functions:

- (1) development of overall regional policies on water quality matters;
- (2) review of federal grant-in-aid applications for projects having water quality implications;
- (3) review and comment on proposed federal and state legislation pertaining to water quality; and
- (4) development of recommended technical standards and regional policies for consideration by joint system operators and customer councils.

The Council does not have authority to review and approve plant and interceptor performance standards, wholesale rates for treatment service, or acquisitions of obsolete plants, nor may the Council draft rules and regulations that bind treatment system operators or customer cities.

Areawide Planning Advisory Committee. During the early stages of the areawide planning process established by section 208, Governor Briscoe created a 39-member Areawide Planning Advisory Committee (APAC) to oversee plan development. All 21 members of the NCTCOG Water Quality Council are also members of the APAC and the same person (B. J. Hampton, Mayor of Hurst) serves as chairman of both committees. The Governor has directed the APAC to carry out several duties:

- (1) provision of a forum for the broadest possible input from the entire spectrum of public and private interest groups affected by the water quality management planning process;
- (2) provision of overall advice and expertise in matters relating to water quality and waste treatment management;

- (3) recommendation of public coordination and information programs regarding the 208 planning process;
- (4) assistance in establishing an ongoing areawide waste treatment management planning process;
- (5) review and comment on alternative recommendations and projections, milestone reports, proposals from project sponsors, inputs from other related programs, technical reports, and the Areawide Waste Treatment Management Plan; and
- (6) participation in other functions necessary to the water quality management planning process as may be deemed appropriate under P.L. 92-500, EPA regulations, state regulations, and regional or local policies.

A 12-member Steering Subcommittee oversees day-to-day planning activities and a 25-member Technical Subcommittee provides technical expertise and review.

Upper Trinity River Basin Water Quality Compact. Although the regional compact recommended by the UTRBCSP never came into existence, in 1975 the four major operators in North Central Texas entered into a much less comprehensive and less complicated Upper Trinity River Basin Water Quality Compact. Dallas, Fort Worth, the North Texas Municipal Water District, and the Trinity River Authority agreed to carry out cooperative programs related to water quality in the upper Trinity River basin. A four-member committee governs Compact activities and unanimous consent is a prerequisite to any action. The initial work program provides for coordination of sampling and monitoring activities, collection of data at a central location, preparation of standardized water quality reports, and development of an automated water quality data system. Each member of the Compact contributed financial support for the work program and the Trinity River Authority provides staff assistance. In addition to its monitoring and data collection program, the

Compact serves as a forum for the major operators to discuss water quality issues of regional significance and to formulate common strategies and policies.

Designation of Regional Treatment Systems by the TWQB. The Texas Water Quality Act empowers the TWQB to define regional waste treatment service areas and to designate one or more treatment systems to serve such area.* The TWQB may order any person discharging wastes within a defined regional service area to utilize the designated treatment system and may cancel or amend existing permits and refuse to grant new permits to force participation in the regional system. The TWQB may also establish reasonable rates to be charged by designated regional operators.

The process of designating regional treatment systems under state law differs in several respects from the designation of management agencies under section 208. First, state law empowers the TWQB to designate regional operators whereas section 208 confers the authority to designate management agencies upon the Governor. Second, the TWQB has authority to designate operators only for waste treatment purposes, whereas the Governor must designate agencies to carry out all aspects of the areawide plan, including regulatory functions as well as waste treatment programs. Third, state law envisions the use of the permit program to force regionalization, while section 208 requires the use of both permits and construction grants to aid in plan implementation. These differences indicate that although the two processes serve similar purposes and could operate in tandem, they nevertheless derive from separate and distinct legal authority and the use of one does not in any way bring the other into play.

* Water Code § 21.201-.205.

The UTRBCSP Management and Financial Program suggested that the proposed regional compact provide for appeal to the TWQB to aid in plan enforcement through the designation of regional treatment systems, but regional treatment programs in North Central Texas have developed on a predominantly voluntary rather than coercive basis. Of the six operators providing service to more than one jurisdiction, only the North Texas Municipal Water District holds a regional designation from the TWQB and the District's ability to operate multiple plants and to provide a variety of treatment related services reduces the coercive aspect to a negligible level. Interview data indicates that operators and customers alike prefer to reach a mutually satisfactory agreement concerning treatment services without pressure from the state.

Intergovernmental Contracts. Local governments in North Central Texas have made extensive use of intergovernmental contracts in the development of regional waste treatment programs. More than 50 long-term contracts for treatment service are presently in effect and the number will increase as additional customer cities abandon obsolete treatment plants and begin discharging to a regional system. The typical contract includes provisions similar to the following:

- (1) the operator agrees to make treatment service available to the customer city and, if necessary, to issue bonds and construct facilities that meet state and federal standards;
- (2) the customer city has the right to discharge wastes into the operator's system at a specified point of entry;
- (3) the parties agree to monitor the quantity and quality of wastes discharged by the customer city into the system;
- (4) the customer city agrees to regulate discharges into its local collection system and to impose necessary pretreatment standards;

- (5) the customer city agrees to pay for treatment service under a formula that assures the operator sufficient revenues to cover operation and maintenance, debt retirement, and other costs directly attributable to providing the service;
- (6) the parties agree that other customer cities may join the system on terms substantially similar to those governing present customers;
- (7) the parties agree that the contract will continue in force for a specified number of years or until the retirement of any bonds issued to finance treatment works constructed for the use of the customer city;
- (8) the operator agrees to prepare an annual report concerning the operations and status of the treatment system and to make the report available to the customer city; and
- (9) the customer city has the right to participate in an advisory council of customer cities and the operator agrees to take under consideration the recommendation of the council.

It is difficult to overemphasize the importance of these contracts to the areawide water quality management planning process. The contracts, most of which result from lengthy and complex negotiations between the parties, govern the fundamental operating relationships among local governments in the planning area and will continue to do so for several decades. Consequently the contracts provide the basic intergovernmental framework upon which future water quality management programs must build.

V. CONCLUSIONS

CONCLUSION ONE: THE GOVERNMENTAL ENTITIES THAT PRESENTLY HAVE RESPONSIBILITY FOR THE OPERATION OF MAJOR PUBLICLY OWNED WASTE TREATMENT PLANTS IN NORTH CENTRAL TEXAS HAVE ALL OF THE WASTE TREATMENT AUTHORITY, WITH TWO POSSIBLE EXCEPTIONS, THAT SECTION 208(c)(2) REQUIRES.

Fourteen governmental entities presently operate major publicly owned waste treatment plants in the North Central Texas planning area. Six of those governmental units (Dallas, Denton, Fort Worth, Garland, North Texas Municipal Water District, and Trinity River Authority) provide service to more than one jurisdiction. The remaining eight (Colony M.U.D. #1, Flower Mound M.U.D. #1, Grapevine, Lewisville, McKinney, Midlothian, Richardson, and Seagoville) provide service to a single jurisdiction.

Each of the fourteen operators of major plants possesses the authority to design, construct, operate, and maintain waste treatment works and to accept industrial wastes for treatment. Each operator also has the authority to deny new sewer service to any municipality or subdivision that refuses to comply with any applicable provisions of an areawide plan. In the case of new service to a subdivision, an operator could make plan compliance a requirement of its sewer extension policy or a condition of receiving a sewer connection permit. In the case of new service to a municipality, an operator could make plan compliance a condition of the treatment service contract.

There are two possible exceptions to the general conclusion that the 14 operators of major treatment plants have the waste treatment authority that section 208(c)(2) requires. First, the six operators that provide service to other jurisdictions do not own or operate local sewage collection systems in their customer cities. Since the law provides that only

designated management agencies may receive EPA construction grant assistance following approval of an areawide plan, it will be necessary to designate as management agencies those customer cities that will need EPA assistance in improving or expanding their sewer systems. Such designations should provide that the customer cities serve as management agencies only for the limited purpose of constructing, operating, and maintaining collection systems. The second possible exceptions would arise if the EPA or the courts adopted a literal interpretation of the requirement for the authority to refuse wastes from noncompliant municipalities and subdivisions. Although the 14 major operators probably could disconnect individual users for abuses directly related to the treatment system, such as a failure to meet pretreatment standards, it is not clear that an operator could terminate service for a plan violation not directly related to the treatment system, such as a refusal to carry out nonpoint source control activities. Furthermore, the eight subregional operators have preexisting contract obligations to their customer cities and could not terminate service for plan violations absent contract amendments to that effect.

CONCLUSION TWO: THE GOVERNMENTAL ENTITIES THAT PRESENTLY HAVE RESPONSIBILITY FOR FINANCING MAJOR PUBLICLY OWNED WASTE TREATMENT WORKS IN NORTH CENTRAL TEXAS HAVE ALL OF THE FINANCIAL AUTHORITY THAT SECTION 208(c)(2) REQUIRES.

Each of the 14 operators of major treatment plants possesses the following powers:

- (1) authority to accept and utilize grant funds for waste treatment management purposes;
- (2) authority to raise revenues through the assessment of proportionate waste treatment charges; and
- (3) authority to incur short- and long-term debt.

In addition, the eight subregional operators have authority under state law and under their contracts with customer cities to assure that each customer city pays its proportionate share of treatment costs, including both capital and operation and maintenance expenses.

CONCLUSION THREE: TEXAS LAW PROBABLY PROVIDES SUFFICIENT WATER QUALITY RELATED REGULATORY AUTHORITY TO FASHION A PROGRAM THAT WILL SATISFY THE PROVISIONS OF SECTION 208.

Section 208 requires a three-part regulatory program to:

- (1) provide for the control or treatment of all point and nonpoint sources of pollution;
- (2) regulate the location, modification, and construction of any facilities that may result in any pollutant discharge in the planning area; and
- (3) assure that any industrial or commercial wastes discharged into publicly owned treatment systems meet applicable pretreatment standards.

If, however, the planning process demonstrates that one or more types of pollution sources do not exist in significant amounts in the planning area or that water quality goals do not require certain types of regulatory activities, the plan need not contain such measures.

Certain major aspects of the regulatory program already operate in North Central Texas. The Texas Water Quality Board issues and enforces permits to control point sources of pollution. Each of the 14 operators of major treatment plants regulates the pretreatment of industrial waste, either through an ordinance or through contract provisions requiring customer cities to impose the necessary regulations. Furthermore, most major operators review the construction of new developments to assure the adequacy of sewer and waste treatment capacity.

Ample authority exists under current law to deal with most, if not all, additional pollution problems that the planning process may identify.

The Texas Water Quality Board has the power to control many types of nonpoint source pollution through either individual discharge permits or general regulations and may delegate that authority to one or more units of local government. Cities have the power to enact ordinances to control nonpoint source pollution as part of their municipal water pollution control programs and a number of other agencies have authority to deal with specific types of nonpoint sources. Municipalities also have authority to control the location, modification, and construction of facilities through traditional land use and development regulations and through sewer connection permits, sewer use ordinances, utilities extension policies, and similar measures. Counties have limited powers over land use and development.

CONCLUSION FOUR: TEXAS LAW PROBABLY PROVIDES SUFFICIENT AUTHORITY FOR COOPERATIVE INTERGOVERNMENTAL WATER QUALITY MANAGEMENT ACTIVITIES TO ENABLE THE DEVELOPMENT OF A MANAGEMENT SYSTEM THAT CAN EFFECTIVELY MANAGE TREATMENT WORKS AND OTHER POLLUTION CONTROL PROGRAMS IN ACCORDANCE WITH THE AREAWIDE PLAN.

In the absence of further guidance from the Environmental Protection Agency concerning the meaning of the requirement that the management agency or agencies have authority to effectly manage treatment works and related facilities in accordance with the areawide plan, it is impossible to reach a definitive conclusion on this point. Texas law, however, provides state and local governments with broad authority to undertake cooperative water quality management activities including planning as well as program operation. Furthermore, the North Central Texas area has a long history of intergovernmental cooperation in the field of water pollution control as illustrated by the Upper Trinity River Basin Comprehensive Sewerage Plan, which NCTCOG adopted in 1971. Current intergovernmental efforts include

the NCTCOG Water Quality Council, the 208 Areawide Planning Advisory Committee, the Upper Trinity River Basin Water Quality Compact, and more than 50 long-term interlocal contracts for waste treatment management.

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Appendix
Section 208 of PL92-500

P.L. 92-500 LAWS OF 92nd CONG.—2nd SESS.

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"AREAWIDE WASTE TREATMENT MANAGEMENT

"Sec. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

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"(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

"(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

"(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

"(7) Designations under this subsection shall be subject to the approval of the Administrator.

"(b) (1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste, treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

"(2) Any plan prepared under such process shall include, but not be limited to—

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(C) the establishment of a regulatory program to—

"(i) implement the waste treatment management requirements of section 201(c),

"(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

"(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

"(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

"(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

"(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

"(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

"(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

"(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

"(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 303 so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed

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and submitted by the Governor to the Administrator for application to all regions within such State.

"(c) (1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

"(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

"(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment industrial wastes.

"(d) After a waste treatment management agency having the authority required by subsection (c) has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(g) (1) within such area except to such designated agency and for works in conformity with such plan.

"(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f) (1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide

waste treatment management planning process under subsection (b) of this section.

"(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

"(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal. There is authorized to be appropriated to carry out this subsection not to exceed \$50,000,000 for the fiscal year ending June 30, 1973, not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, and not to exceed \$150,000,000 for the fiscal year ending June 30, 1975.

"(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

"(h) (1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed \$50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.